

Chapter Two

Best Practices for Setting Goals of the Program of Instruction¹⁰³

A. Be Committed to Preparing Students for Practice.

Principle: The school is committed to preparing its students to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers.

Comments:

Law schools should demonstrate their commitment to preparing students for practice. They should begin with mission statements that include a commitment to prepare students to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers.

Most law schools have multiple missions. At its core, however, legal education is a professional education, and part of the mission of every law school is to prepare its students to enter the legal profession. It is why law schools exist.

The accreditation standards of the American Bar Association require law schools to prepare their students for practice. All ABA-approved law schools must “maintain an educational program that prepares its students for admission to the bar and *effective and responsible participation in the legal profession.*”¹⁰⁴ Thus, it seems self-evident that a law school should include this objective in its mission statement.

A mission statement explains to prospective students, alumni, and contributors how the school views its reasons for existing.

Ideally, the articulated mission of the school will be the result of a dialogue between members of the law faculty and representatives of the constituencies of the law school. Such a group can identify the functions that the school should serve. The process of articulating a mission will likely identify functions that the school already performs. But it may reveal other roles that the group feels ought to be undertaken, or it may uncover a consensus that the school should no longer perform a particular function. The group should distinguish mission from outcomes and teaching methods. . . .

The resulting mission statement should reflect the values of the particular institution.

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In the end, the articulated mission should be a brief statement of the overall goals and objectives of the law school in its

¹⁰³ “Program of instruction” includes all curricular and co-curricular components that are developed by a law faculty to support the educational mission of a law school.

¹⁰⁴ Standard 301(a), ABA STANDARDS, *supra* note 28, at 17 (emphasis added).

role of serving society. Ideally, it is concisely and perhaps elegantly drafted to inspire in others a desire to support the mission.¹⁰⁵

More important than words on paper, of course, is that the institution actually be committed to doing the best job it can to prepare its graduates to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers. Evidence of such commitment could be the extent to which a school employs best practices for legal education, as described in this document or elsewhere.

B. Clearly Articulate Educational Goals.

Principle: The school clearly articulates its educational goals.

Comments:

There is nothing more important for any educational institution than to have clearly articulated educational goals. A law school cannot determine whether it is achieving its educational goals unless the goals are clear and specific. A law school's educational objectives should be published and made available to prospective and current students, alumni, and employers.

The educational goals of most law schools in the United States are articulated poorly, if at all. This is one of the primary reasons why most law school curriculums can best be described as chaotic: they lack cohesion, coordination, and common purpose, especially after the first year.

Law teachers have consistently rejected calls to define their objectives more clearly. In 1971, the Carrington Report encouraged law teachers to be more precise about their educational objectives.

While most law teachers would assert that they are teaching much beside legal doctrine, few are eager to say precisely what. Some have been content to describe their work as teaching students “to think like lawyers,” although that phrase is so circular that it is essentially meaningless. Perhaps the reluctance to be more specific is borne in part by a distaste for platitudes. Or perhaps it reflects the instinct of lawyers (shared by others who are experienced in human conflict) that it is more difficult to secure approval of goals than means. This reluctance should be overcome, partly to try to help students get a better sense of direction, but also in order to direct attention to the “hidden curriculum” which serves to transmit professional traits and values by the process of subliminal inculturation.¹⁰⁶

¹⁰⁵ MUNRO, *supra* note 4, at 87.

¹⁰⁶ AALS Curriculum Study Project Committee, *Training for the Public Professions of the Law: 1971*, reprinted in HERBERT L. PACKER & THOMAS EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 93, 129 (1972) [hereinafter PACKER & EHRLICH] (concluding that “[l]aw teachers are confused about legal education and the form that it has been forced to take by the interplay of bar admission requirements, professional organization, and the law schools. They are unclear about the goals of the second and third years of legal education. They are often frustrated in their scholarship and uncertain about their professional and academic roles. Increasingly disappointed and impatient students interact with increasingly frustrated and confused teachers and emerge with a patchwork professional education and an ambivalent view of themselves as

In addition to clarifying what we are trying to teach, it is important that we explain our teaching objectives to our students. Part of the stress and confusion that first year students experience is caused by our failure to explain why we are having them read appellate cases and wrestle with questions that do not seem to have any correct answers. This is a problem that can be easily cured by developing transparent teaching objectives and helping students understand what we are trying to accomplish.

In her examination of the process of learning to “think like a lawyer,” Judith Wegner determined that most first year students reach a point where they master the concept and a “phase shift” occurs in their understanding of knowledge and the process of knowing. She notes, however, that the progressive development of legal reasoning skills and the ultimate “phase shift” could be accomplished more quickly with less stress if the educational objectives were made clear to students. “Unfortunately, the critical underlying ‘phase-shift’ associated with legal ‘thinking’ is rarely recognized and articulated, when it might better be rendered visible and addressed.”¹⁰⁷

Part of the problem with clarifying the goals of legal education is that the world of increased specialization, coupled with the innumerable fields of law that await law school graduates, makes it impossible for three years of law school to prepare students to practice competently in every field of law. The requisite knowledge and skills are simply too diverse. There are several logical responses to the disconnect between law schools’ general education mission and the legal market’s demand for lawyers with very specific and extremely diverse types of competencies. Law schools could either:

- prepare students to provide a limited range of legal services,
- prepare students for very specific areas of practice, or
- help students develop fundamental competencies common to multiple practice areas, counting on students to acquire specialized knowledge and skills after graduation.

Law schools in the United States have long asserted that they are achieving the third objective, but in fact we mostly teach basic principles of substantive law and a much too limited range of analytical skills and other competencies, such as legal research and writing.

There is a place in legal education for “niche” law schools that seek to prepare students for very specific areas of practice, or even for specialty tracks in any law school’s curriculum.¹⁰⁸ The creation of more niche schools or specialty tracks would

professionals.”).

¹⁰⁷ Wegner, *Thinking Like a Lawyer*, *supra* note 47, at 11.

¹⁰⁸ Alfred Reed predicted in 1921 that law schools would inevitably begin teaching lawyers to be specialists rather than generalists. He noted that even in 1921 most lawyers confined their practices to a few areas of practice, though they were initially trained as generalists. He believed there was already too much law for law schools to possibly teach thoroughly. “As there seems to be no practicable means of reducing the volume of the law in the near future, and nobody wants the law to be less thoroughly taught, the only available remedy is the direction of specialized schools leading into specialized branches of the profession. This development will probably not occur very soon. It will probably not occur as soon as it ought. Sooner or later, as the existing unitary organization of legal education, and of the profession itself, proves inadequate to meet the requirements of actual practice, the organization will be changed to correspond.” ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921),

be a particularly appealing development if legal education would become more affordable for some and produce lawyers who are proficient in areas where unmet legal needs are greatest. As explained by Deborah Rhode:

It makes no sense to require the same training for the Wall Street securities specialist and the small town matrimonial lawyer. While some students may want a generalist degree, others could benefit from a more specialized advanced curriculum or from shorter, more affordable programs that would prepare graduates for limited practice areas. . . . Almost no institutions require students to be proficient in areas where unmet legal needs are greatest, such as bankruptcy, immigration, uncontested divorces, and landlord-tenant matters.¹⁰⁹

While specialized programs of instruction may be appropriate for some schools, most law schools, especially state-supported schools, have missions that require them to try to prepare students for a wide range of practice options. Thus, they have little choice than to try to help students develop the fundamental competencies common to most practice areas and the characteristics of effective and responsible lawyers.

C. Articulate Goals in Terms of Desired Outcomes

Principle: The school articulates its educational goals in terms of desired outcomes, that is, what the school’s students should know, understand, and be able to do, and the attributes they should have when they graduate.

Comments:

1. What “Outcomes” Means.

A statement of educational goals should describe, to the extent possible, what the school’s students will be able to do after graduating and how they will do it in addition to what they will know, that is, it should describe the school’s desired outcomes. The importance of clearly specifying the desired outcomes for curriculum planning purposes is well-recognized by educational theorists:

reprinted as edited by Kate Wallach in PACKER & EHRLICH, *supra* note 106, at 163, 186. Reed recognized, however, that “[p]rospective practitioners of different vocations must receive part of their education in common, for reasons of economy: the community cannot afford to establish specialized machinery for more than the final stage of training. They must do so for what is technically known as “orientation”: when they start their education, they do not know what they will eventually do, and it is against public policy that they should be forced to make a too early decision. They must do so in order to establish an equipoise to the narrowing tendencies of training for one particular end: the late war has fortified in this country the English tradition that education which conduces in no way, that human calculation can foresee, to the efficient discharge of our particular duties, whether as citizens or as individuals, may nevertheless have a value of its own, by widening our sympathies, teaching us toleration of another’s point of view, freeing us from the temptation to subordinate humanitarian impulses to the demands of ruthless logic.” *Id.*

¹⁰⁹ DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE* 190 (2000).

When objectives are not made explicit, the result is almost certainly a preoccupation with specific knowledge.

If students are expected to develop a degree of independence in pursuit of learning, reach a satisfactory level of skill in communication, demonstrate sensitivity to their own values and those of their associates, become capable of collaborating with peers in defining and resolving problems, be able to recognize the relevance of their increasing knowledge to the current scene, and seek continually for insightful understanding and organization of their educational experience, these outcomes must be specifically stated. In addition, they must be made explicit in relation to learning experiences and by providing opportunities for demonstration of the developing behavior and for evaluation of it.

Content, subject matter, and behavior are interrelated and must be so construed by teachers, students, and evaluators. This requires an interrelated trinity of conceptual statements defining the objectives of operational statements, indicating how the behavior is to be evoked and appraised, and providing standards for deciding whether progress is evident and whether accomplishment is finally satisfactory. If this approach is fully implemented, the traditional distinctions between majors and distribution (or between depth and breadth) become meaningless.

No matter what the elements involved in planning a curriculum, it must involve content and learning experiences chosen to produce the ultimate capabilities desired in those whose educational experiences it provides.¹¹⁰

Educational theorists most frequently describe outcomes as having three components: knowledge, skills, and values. “Statements of intended educational (student) outcomes are descriptions of what academic departments intend for students to know (cognitive), think (attitudinal), or do (behavioral) when they have completed their degree programs”¹¹¹ As indicated in the preceding quote, educational theorists usually refer to “attitudes” instead of “values.” Either word would suffice, but we prefer using “values” because attitudes are the products of value systems. Values are the bases from which preferences arise and on which all decisions are made. They guide human action and decisions in daily situations.¹¹²

Currently, when law schools articulate educational goals, they almost universally refer to what students will do in class, what they will learn about the law,

¹¹⁰ PAUL L. DRESSEL, HANDBOOK OF ACADEMIC EVALUATION: ASSESSING INSTITUTIONAL EFFECTIVENESS, STUDENT PROGRESS, AND PROFESSIONAL PERFORMANCE FOR DECISION MAKING IN HIGHER EDUCATION 316-17 (1976).

¹¹¹ JAMES O. NICHOLS, THE DEPARTMENTAL GUIDE AND RECORD BOOK FOR STUDENT OUTCOMES ASSESSMENT AND INSTITUTIONAL EFFECTIVENESS 17 (1995).

¹¹² MILTON ROKEACH, THE NATURE OF HUMAN VALUES 14 (1973). “Values are determinants of virtually all kinds of behavior that could be called social behavior – of social action, attitudes and ideology, evaluations, moral judgments and justifications of self and others, comparisons of self with others, presentations of self to others, and attempts to influence others.” *Id.* at 24.

or what specific skills they will acquire, not what they will be able to do with their knowledge and skills or how they should do it.

The ABA accreditation standards also describe curriculum requirements in terms of course content. The standards require law schools to provide instruction encompassing a broad range of topics, although these are described in general terms for the most part and are content-focused rather than outcomes-focused.

A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem-solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary to effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, and responsibilities of the legal profession and its members.¹¹³

On the other hand, the Preamble to the Standards, which is not part of the accreditation mandates, contains the following statement that expresses curricular objectives in a more outcomes-focused manner:

. . . [A]n approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students, and the profession, it must provide an educational program that ensures that its graduates:

- (1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
- (2) receive basic education through a curriculum that develops:
 - (i) understanding of the theory, philosophy, role, and ramifications of the law and its institutions;
 - (ii) skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession;
 - (iii) understanding of the basic principles of public and private law; and
- (3) understand the law as a public profession calling for performance of pro bono legal services.¹¹⁴

¹¹³ Standard 302, ABA STANDARDS, *supra* note 28, at 17-18.

¹¹⁴ *Preamble, id.* at viii.

We encourage law schools to describe their desired outcomes in terms of what their students will know, be able to achieve, and how they will do it upon graduation. We also encourage the ABA Section of Legal Education and Admissions to the Bar to rewrite the accreditation standards in outcomes-focused language. The standards should describe the core knowledge, skills, and values that all law schools should strive to teach.

2. The Global Movement Toward Outcomes-Focused Education.

A transition from content-focused to outcomes-focused instruction is underway in legal education programs in other countries and in professional education in other disciplines. Prior calls for a similar transition among law schools in the United States had some impact, but not much.¹¹⁵ It is an idea that warrants aggressive implementation.

Scotland, Northern Ireland, and England and Wales have made a transition to outcomes-focused systems of legal education, both in law schools and in the graduate programs operated by professional organizations.

The Law Society of England and Wales is developing a new framework of desired outcomes. This was motivated in part by a decision of the Court of Justice of European Communities that requires professional regulatory bodies such as the Law Society to assess on an individual basis, and to give credit for, any equivalent qualifications and experience held by European Union (EU) nationals.¹¹⁶ The case was brought by Christine Morgenbesser, a French woman living in Italy, who completed most of her legal education in France and desired to enroll in the Italian “registro dei praticanti” which is a necessary prerequisite for taking the aptitude test for practicing law in Italy. Her application was denied on the basis that she did not hold a law degree that was awarded in Italy. The court held that Italy could not refuse to enroll her solely on the ground that her law degree was not obtained in Italy. What is important, in the court’s opinion, is whether the knowledge and skills acquired by an applicant sufficiently meet the qualifications for practice in Italy. Italy, of course, has the right to measure whether an applicant has the requisite knowledge and skills.

As a result of the Morgenbesser case, the Law Society cannot prescribe how or where applicants for admission to practice law in England and Wales must study and prepare for qualification, but it can set the standard they must reach. Additional motivation for developing a new framework came from age and disability discrimination legislation that requires licensing regulations to be reasonably related to the attributes necessary to perform the job for which a license is required.¹¹⁷

¹¹⁵ See, e.g., MUNRO, *supra* note 4; Gregory S. Munro, *Integrating Theory and Practice in a Competency-Based Curriculum: Academic Planning at the University of Montana*, 52 MONT. L. REV. 345 (1991); Mudd, *Beyond Rationalization*, *supra* note 40.

¹¹⁶ Case C-313/01, *Christine Morgenbesser v Consiglio dell’Ordine degli avvocati di Genova* 2003 E.C.R. I-(13.11.2003).

¹¹⁷ The Law Society, *Qualifying as a Solicitor – A Framework for the Future: A Consultation Paper 6* (March 2005) [hereinafter *Law Society Framework*], available at <http://www.lawsociety.org.uk/documents/downloads/becomingtfr05consultppr.pdf>. (last visited May 23, 2005). The first and second consultation papers are also on the Law Society’s website at <http://www.lawsociety.org.uk/documents/downloads/becomingfrconsultation1.pdf> and <http://www.lawsociety.org.uk/documents/downloads/becomingfrconsultation2.pdf>.

Whereas law teaching in the United Kingdom previously focused heavily on content, the current approach is to focus on what a student should be able to do as a result of his or her studies. The Quality Assurance Agency established benchmarks that set minimal standards for undergraduate law degrees.¹¹⁸ Each law school is expected to establish its own standards at a modal level, that is, to describe what a typical student should be able to do rather than what the weakest students can do. Thus, the QAA benchmarks are not standards to measure up to, but standards below which students cannot fall.

After obtaining their undergraduate law degrees, students who want to practice law in the United Kingdom are still several years away from being licensed to practice. For example, in England and Wales, the next step for aspirant solicitors is the year-long Legal Practice Course. This is followed by a two year period of work-based learning under the supervision of an experienced solicitor, the “training contract.” During this time, the trainee must also enroll in the Professional Skills Course for a minimum of seventy-two hours of instruction. These programs are very outcomes-focused. Their goal is to teach students what they need to know, understand, and be able to do and the attributes they should have on their first day as practicing lawyers.

The Law Society of England and Wales began the process of developing a new outcomes-focused training framework for solicitors in 2001. Three consultation papers, most recently in March, 2005, contributed to a statement of the core values, professional skills, and legal understanding that solicitors should have on their first day in practice, and the Law Society is developing new forms of examination and assessment of those values, skills, and knowledge.¹¹⁹ The proposals are intended “to ensure that qualification to practice law is based on an individual’s knowledge and understanding of law and legal practice and their ability to deliver legal services to a high quality, rather than on their ability to complete a particular course or courses of study.”¹²⁰ The new framework for the Legal Practice Course will be implemented in 2008/2009. The Law Society is also seeking to modernize the training contract arrangements. It plans to undertake a two year pilot of a new framework for assessment of work-based learning beginning in September, 2007.

The Law Society of Scotland is also reexamining its current program of instruction for prospective Scottish solicitors, which is already outcomes-focused. In June, 2004, the Society released a working draft of “A Foundation Document” for the future development of professional legal training in Scotland.¹²¹ The document described the fundamental values of the legal profession and the fundamental principles of professional legal education, taking as its core educational concept the benchmark of competence in legal practice. The document defined competence

¹¹⁸ For a description of the impact of benchmarking on undergraduate legal education in England and Wales and N. Ireland, see *John Bell, Benchmarking: A Pedagogically Valuable Process?*, <http://webjcli.ncl.ac.uk/1999/issue2/bell2.html>. Further information can be obtained from the websites of the various universities, law societies, bar councils, and, in Scotland, the Faculty of Advocates.

¹¹⁹ Law Society Framework, *supra* note 117, at Annex 1, § A.

¹²⁰ *Id.* at 8.

¹²¹ The Foundation Document is no longer available on-line. It was taken off the website of the Law Society of Scotland, <http://www.lawscot.org.uk>, because as of September, 2006, the Law Society had undertaken another, much more comprehensive consultation with the profession about legal education. Presumably, the results of this consultation will be made available on the Law Society’s website.

in entry level professional legal practice as “the distinguishing but minimum performance standards characteristic of the performance of a novice legal professional.”

The Scottish Foundation Document recognized that the ongoing revolution in business practice and communication creates the prospect of continuously changing requirements for law practice. Thus, it tried to identify how best to prepare lawyers to cope with and manage all the changes they will encounter during their careers. The document endorsed the concept of “deep learning” that is designed to foster understanding, creativity, and an ability to analyze material critically. It challenges the philosophy of “coverage” which asserts that new lawyers should not be permitted to practice unless and until they have demonstrated knowledge of the key provisions of numerous branches of Scottish law. It viewed the “coverage” philosophy as encouraging passive, unreflective learning, while discouraging analysis, reasoned argument, and independent research. In addition to continuing its emphasis on skills training in the three years between the granting of a law degree and the grant of a full Practising Certificate, the Society joined the Joint Standing Committee on Legal Education in Scotland and the Quality Assurance Agency in calling on undergraduate law programs to increase their emphasis on teaching generic, transferable skills such as communication, reasoning and analysis, problem-solving, teamwork, and information technology.

Australia is also considering a transition towards outcomes-focused legal education. In 2000, the Australian Law Reform Commission completed a four year study of the federal civil justice system, including legal education, and published its report.¹²² Recommendation 2 of the report states that “[i]n addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.” The following observation is included among the Commission’s findings in support of this recommendation.

It is notable that where the MacCrate Report focuses on providing law graduates with the high level professional skills and values they will need to operate in a dynamic work environment, and assumes that lawyers will keep abreast of the substantive law as an aspect of professional self-development, the equivalent list – the ‘Priestly 11’ – focuses entirely on specifying areas of substantive law. In other words, MacCrate would orient legal education around *what lawyers need to be able to do*, while the Australian position is still anchored around outmoded notions of *what lawyers need to know*.¹²³

¹²² AUSTRALIAN LAW REFORM COMMISSION, MANAGING JUSTICE: A REVIEW OF THE FEDERAL CIVIL JUSTICE SYSTEM, Rep. No. 89 (1999) [hereinafter AUSTRALIAN LAW REFORM COMMISSION], available at <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>. An article that discusses the sections of the report relating to legal education is David Weisbrot, *What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience*, in ERASING LINES, *supra* note 40, at 21.

¹²³ AUSTRALIAN LAW REFORM COMMISSION, *supra* note 122, at ¶ 2.21. The ‘Priestly 11’ referred to in this quotation is a list of eleven compulsory doctrinal areas for academic legal study which individuals must complete in order to fulfil admission requirements. It was endorsed by the Consultative Committee of State and Territorial Admitting Authorities headed by Mr. Justice Lancelot Priestly, but roundly criticized by the Australian Law Reform Commission. See Weisbrot, *supra* note 124, at 122.

Other professions in the United States are far ahead of legal education in shifting to outcome-focused programs of instruction.

The Accreditation Council of Graduate Medical Education (ACGME) has an ongoing initiative, the Outcome Project, by which ACGME is increasing its emphasis on educational outcomes assessment in the accreditation process.¹²⁴ Rather than measuring the potential of a graduate medical education program to educate residents, the Outcome Project emphasizes a program's actual accomplishment through assessment of program outcomes.

ACGME identifies the following six general competencies for graduates of graduate medical schools:

1. Medical knowledge.
2. Interpersonal and communication skills.
3. Professionalism.
4. Patient care.
5. Practice-based learning and improvement.
6. Systems-based practice.¹²⁵

All Residency Review Committees (RRCs) were required to include the General Competencies, and their evaluation, in their respective program requirements by July, 2002. A "full" version of the General Competencies is being drafted by a Joint Initiative of ACGME and the American Board of Medical Specialties (ABMS) to reflect the uniqueness of each specialty.

Explaining why it chose to concentrate on outcomes, ACGME reported that it was "playing catch up" to other accrediting bodies in the health professions, education, and business that have focused on educational outcomes since the 1980's. At that time, the U.S. Department of Education mandated a movement aimed at making greater use of outcomes assessment in accreditation. As a result, efforts were begun by many organizations to expand their use of outcomes measures in accreditation. ACGME further explained that the impetus to emphasize educational outcomes assessment in graduate medical education accreditation is based on the following goals: 1) to increase accountability to the public; 2) to improve

¹²⁴ Accreditation Council for Graduate Medical Education, *The Outcome Project* (2005) [hereinafter, ACGME Outcome Project], *available at* <http://www.acgme.org/Outcome/>.

¹²⁷ *Id.* at General Competencies, version 1.3 (9.28.99), <http://www.acgme.org/Outcome/comp/compFull.asp>. We were so impressed with the ACGME's work product that, in our first attempt to describe desirable outcomes for legal education, we took its statement of six competencies and converted them into terms that fit legal profession. The resulting list was:

1. Legal knowledge.
2. Lawyering skills;
 - a. research and analysis of laws and facts,
 - b. interpersonal and communication skills,
 - c. client services,
 - d. practice-based learning and improvement, and
 - e. contexts- and systems-based practice, including practice organization and management.
3. Professional values.

This list was concise, seemed to be comprehensive, and was based on ACGME's well-funded and professionally developed description of professional competencies. In the end, however, we decided that the description of outcomes being developed by the Law Society of England and Wales was a better fit for legal education.

measurements of program quality; and 3) to inform discussions with policymakers and others who are focused on funding for medical education and public safety.

So far, most law schools in the United States have largely ignored the outcomes movement. We encourage law schools and those who regulate legal education and attorney licensing to shift the focus of legal education from content to outcomes. Legal education should strive to develop the competencies and characteristics of effective and responsible lawyers. Law schools should describe their learning objectives in terms of what graduates will be able to do and how they will do it when they enter the legal profession, and not just in terms of what they will know.

3. Principles for Developing Statements of Outcomes.

The following seven principles provide guidance for developing statements of outcomes:¹²⁶

1. A faculty should formulate outcomes in collaboration with the bench, bar, and perhaps other constituencies [including students]. The practicing profession, for instance, can assist in identifying what graduates need to be able to do to serve clients and society.
2. Outcomes should be consistent with and serve the school's mission.
3. A faculty should adopt an outcome only upon arriving at consensus after dialogue and deliberation. By this means, an outcome gains acceptance and permanence. Outcomes adopted on an *ad hoc* basis on the whim of individual professors or members of the bench and bar may present problems of inconsistency with mission, lack of acceptance, and lack of credibility.
4. Outcomes should be measurable. It is self-defeating to state an outcome which cannot be assessed. At the same time, it is important not to be bound by the expectations of objective decimal-place accuracy. In this context, "measurable" means "a general judgment of whether students know, think, and can do most of what we intend for them."¹²⁷ For example, if MacCrate's fundamental skill "Recognizing and Resolving Ethical Dilemmas"¹²⁸ was among a school's desired outcomes, it would be difficult, if not impossible, to measure with mathematical accuracy. Yet, clinical faculty members who work with a student for a semester report with some confidence that they are able to form a general judgment as to whether the student has the ability to recognize and resolve ethical dilemmas.
5. An outcome should be stated explicitly, simply, in plain English, and without educational and legal jargon. The strength of a program based on students' abilities is that the outcomes are clear to students, the faculties, and the constituencies, so that all focus on common goals. The explicit statement of outcomes assures continuity in the

¹²⁶ These principles were copied from MUNRO, *supra* note 4, at 94-95.

¹²⁷ NICHOLS, *supra* note 111, at 22.

¹²⁸ MACCRATE REPORT, *supra* note 31, at 140.

academic program. Lack of explicit statements makes it more likely that outcomes will be ignored by new or visiting faculty members.

6. There is no “correct” number of outcomes for a law school. Outcomes are suggested by the mission statement: their number is a function of mission, resources, and time. Faculty need to consider how many outcomes they can reasonably address and assess during law school.¹²⁹ It is worth noting that a Senior Scholar with the American Association of Higher Education (AAHE) recommends that educational institutions embarking on an outcomes-focused approach start small and focus on articulating, assessing and insuring student acquisition of core skills, values, and knowledge and gradually build towards a more robust list of skills, values, and knowledge.¹³⁰
7. The demands which outcomes make on students and faculty should be reasonable in light of the abilities of the students and the faculty.

The task of developing descriptions of specific outcomes for the program of instruction is neither simple nor easy. It is, however, an important task to undertake if legal education is to realize its full potential. The process of articulating outcomes is not something that any law school should necessarily attempt on its own. Collaboration among all law schools would make the transition easier and improve the quality of the results. Perhaps teams of law professors from multiple schools could work together preparing proposed statements and illustrations of outcomes. Perhaps it is time to reconsider the MacCrate Task Force’s recommendation to establish an “American Institute for the Practice of Law” to help coordinate research into and implementation of ways to improve the preparation of lawyers for practice.¹³¹

4. Various Statements of Desirable Outcomes.

While it is easy to conclude that legal educators should seek to achieve outcomes, it is difficult to determine how best to describe desirable outcomes. We are convinced, however, that it is essential for legal educators in the United States to make the effort to describe the desired outcomes of legal education, even if our initial efforts are imperfect. Only when we articulate the objectives of legal education can we evaluate the extent to which we are achieving those objectives.

There are many tenable ways to define and organize statements of desired outcomes. Some of the proposed descriptions of the core general characteristics and abilities that we might want new lawyers to possess include the following proposals, presented in chronological order with the most recent coming first.

¹²⁹ NICHOLS, *supra* note 111, at 20.

¹³⁰ Peggy L. Maki, *Developing an Assessment Plan to Learn About Student Learning*, J. ACAD. LIBRARIANSHIP, Jan. 2002, at 8, *available at* <http://www.lanec.edu/in-service/fall05/DevelopingAssessmentPlan.pdf>. (“Initially, limiting the number of outcomes colleagues will assess enables them to determine how an assessment cycle will operate based on existing structures and processes or proposed new ones.”)

¹³¹ MACCRATE REPORT, *supra* note 31, at 140.

LSAC Project to Create a New LSAT

The Law School Admission Council (LSAC) is supporting a project that might result in a very different Law School Admissions Test (LSAT). The LSAT is a cognitive exam that uses multiple-choice questions to measure logical and analytical reasoning skills as well as reading comprehension. The LSAT does not, however, predict success as a lawyer. Rather, it predicts law school performance and is only partly effective at that. The goal of the current project is to create a new test that will evaluate a broader range of factors related to effectiveness as a lawyer. The principal investigators of the project are Marjorie M. Shultz and Sheldon Zedeck.

The project was initiated in 2000. The first phase identified twenty-six factors related to effectiveness as a lawyer (see below). The second phase developed tests that are designed to determine if law school applicants have the potential to perform effectively on the twenty-six factors. For example, the new tests will try to measure situational and practical judgment.

The third phase of the project, which began in August, 2006, is to find out if the new tests work. The tests are being administered to practicing lawyers. Their supervisors and peers will then evaluate these lawyers on a subset of the twenty-six effectiveness characteristics. Shultz and Zedeck will review the data to determine if the tests are valid and reliable.¹³²

The factors listed below are randomly ordered; they are not in order of importance.

1. Problem solving.
2. Practical judgment.
3. Passion and engagement.
4. Analysis and reasoning.
5. Creativity/innovation.
6. Integrity/honesty.
7. Writing.
8. Community involvement and service.
9. Building client relationships and providing advice and counsel.
10. Organizing and managing (own) work.
11. Fact finding.
12. Self-development.
13. Researching the law.
14. Speaking.
15. Ability to see the world through the eyes of others.
16. Strategic planning.
17. Networking and business development.
18. Stress management.
19. Listening.
20. Influencing and advocating.
21. Questioning/interviewing.
22. Negotiation skills.
23. Diligence.
24. Organizing and managing others (staff/colleagues).
25. Evaluation, development, and mentoring.
26. Developing relationships.

¹³² An informational website that includes links to articles about the project is at <http://www.law.berkeley.edu/beyondlsat/>.

Rogelio Lasso's Description

Rogelio Lasso concluded that good lawyers possess four competencies:

1. *Knowledge* which includes technical and general knowledge. This competency involves the cognitive and analytical skills that have been the principal focus of legal education since the advent of law schools.
2. *Skill* which includes two types of lawyering skills: "those needed to obtain and process information and those which enable the lawyer to transform existing situations into those that are preferred."
3. *Perspective* which is the ability to consider the historical, political, ethical, and moral aspects of a legal problem and its possible solutions.
4. *Personal attributes* which refers to qualities of character that pertain to the way lawyers go about their professional activities and relate to others.¹³³

Teaching and Learning Professionalism Report's Description

The Professionalism Committee of the ABA Section of Legal Education and Admission to the Bar described the "essential characteristics of the professional lawyer" as:

1. Learned knowledge.
2. Skill in applying the applicable law to the factual context.
3. Thoroughness of preparation.
4. Practical and prudential wisdom.
5. Ethical conduct and integrity.
6. Dedication to justice and the public good.

Supportive elements are:

1. Formal training and licensing.
2. Maintenance of competence.
3. Zealous and diligent representation of clients' interests within the bounds of law.
4. Appropriate deportment and civility.
5. Economic temperance.
6. Subordination of personal interests and viewpoints to the interests of clients and the public good.
7. Autonomy.
8. Self-regulation.
9. Membership in one or more professional organizations.
10. Cost-effective legal services.
11. Capacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system.
12. A client-centered approach to the lawyer-client relationship that stresses trust, compassion, respect, and empowerment of the client.¹³⁴

¹³³ Rogelio Lasso, *From the Paper Chase to the Digital Chase; Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 12-13 (2002).

¹³⁴ AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE 6-7 (1996)

Judith Younger's Description

Judith Younger identified eight abilities that law school graduates should possess:

1. Put problems into their appropriate places on substantive legal map; in other words, spot the issues, characterize or affix the right legal labels to facts.
2. Plumb the law library to its greatest depth and come up with buried treasure.
3. Write grammatically, clearly, and with style.
4. Speak grammatically, clearly, and with style.
5. Find, outside the library, the facts they decide they need to know. This includes the ability to listen.
6. Use good judgment.
7. Find their way around courts, clerks, legislatures, and governmental agencies.
8. Approach any problem with enough social awareness to perceive what nonlegal factors bear on its solution.¹³⁵

Jack Mudd's Description

Jack Mudd described four “dimensions” that are prerequisites for effective lawyer performance:

1. Knowledge.
2. Skill.
3. Perspective.
4. Character.¹³⁶

Bayless Manning's Description

Dean Bayless Manning is credited with the following list:

1. Analytic skills.
2. Substantive legal knowledge.
3. Basic working skills.
4. Familiarity with institutional environment.
5. Awareness of total non-legal environment.
6. Good judgment.¹³⁷

5. Statement of Outcomes Chosen for This Document.

We considered each of the preceding descriptions of desirable outcomes, and others. We decided that the most useful approach would be to adopt, with a few changes, the statement of outcomes being pursued in England and Wales, at least as a starting point for discussion. The Law Society of England and Wales has proposed the following statement of the core general characteristics and abilities that solicitors

[hereinafter TEACHING AND LEARNING PROFESSIONALISM].

¹³⁵ Judith T. Younger, *Legal Education: An Illusion*, 75 MINN. L. REV. 1037, 1039 (1990) (concluding that law schools “are successfully teaching only one of these qualities – the first on the list”).

¹³⁶ Mudd, *Beyond Rationalization*, *supra* note 40.

¹³⁷ PACKER & EHRLICH, *supra* note 106, at 23-24 (citing Dean Bayless Manning).

should have on day one in practice.¹³⁸ Collectively, these are the components of entry level competence.

1. Demonstrate appropriate behavior and integrity in a range of situations, including contentious and non-contentious areas of work.
2. Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.
3. Apply techniques to communicate effectively with clients, colleagues and members of other professions.
4. Recognize clients' financial, commercial and personal constraints and priorities.
5. Effectively approach problem-solving.
6. Effectively use current technologies and strategies to store, retrieve and analyze information and to undertake factual and legal research.
7. Demonstrate an appreciation of the commercial environment of legal practice, including the market for legal services.
8. Recognize and resolve ethical dilemmas.
9. Use risk management skills.
10. Recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill and to develop strategies that will enhance their personal performance.
11. Manage their personal workload and manage efficiently and concurrently a number of client matters.
12. Work as part of a team.¹³⁹

We decided to use the Law Society's statement of desirable outcomes for two reasons. First, we think it provides a reasonable description of the knowledge, skills, and values that a client should be able to expect a novice lawyer to possess. Our second reason is our hope that, if legal educators in the United States can agree on a reasonably similar statement, we can also study how legal educators in the United Kingdom are producing and assessing those outcomes.

We develop and explain our statement of desired outcomes later in this Chapter. It is necessarily general. It would be inappropriate and fruitless to try to describe in detail the specific outcomes that every law school should seek to achieve because these will necessarily differ depending on the mission of each school and the needs of its students, and it would be inefficient to attempt to suggest even an intermediate level of specificity until we agree that the proposed general statement of outcomes is appropriate.

There are, of course, much more detailed descriptions of the knowledge, skills, and values that lawyers need to practice law. Three such descriptions are

¹³⁸ The Law Society, Second Consultation on a New Training Framework for Solicitors, § 4, ¶ 46 (Sept. 2003) [hereinafter Law Society Second Consultation], *available at* <http://www.lawsociety.org.uk/documents/downloads/becomingtfranalysisfirms.pdf>. *See also*, Law Society Statement on the Training Framework Review, <http://www.ukcle.ac.uk/quality/lawsoc.html> (last visited July, 2004). The proposed statement of outcomes was organized into five categories which were modified slightly during the third consultation, the results of which are contained in the Law Society Framework, *supra* note 117.

¹³⁹ Law Society Framework, *supra* note 117, at 15-16.

in David R. Barnhizer, “An Essay on Strategies for Facilitating Learning” 12 (June 2006), Cleveland-Marshall Legal Studies Paper No. 06-127, available at SSRN: <http://ssrn.com/abstract=906638>; the MacCrate Report;¹⁴⁰ and H. Russell Cort & Jack L. Sammons, *The Search for “Good Lawyering:” A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397, 439-44 (1980).

The Law Society of England and Wales is preparing a more detailed statement of its outcomes “to a level of detail that would enable the qualification requirements to be transparent.”¹⁴¹ However, the current descriptions of the desired outcomes of the Legal Practice Course provide examples of how to describe desired outcomes for professional legal education in more detail.¹⁴²

D. Articulate Goals of Each Course in Terms of Desired Outcomes.

Principle: The school articulates what its students should know, understand, and be able to do, and the attributes they should develop in each course or other component of the program of instruction.

Comments:

Law schools should describe the specific educational goals of each course or other component of the program of instruction in terms of what students will know, understand, and be able to do, and what attributes they will develop by completing that component.

A formidable obstacle every teacher faces is how to analyze the content of a course, predetermine the outcomes desired, and communicate the necessary performance expectations to the learners in a detailed, congruous syllabus that logically connects goals to the measures for grades. That is, the objectives follow from the goals, the requirements are demonstrations of performance of those objectives, and the evaluation methods reflect attainment of the objectives to measurable criteria. This is rarely simple – at times teachers need their own cooperative learning groups in order to solve the myriad of problems in coordinating course goals, uncovering the traditional discontinuities between goals and grading, and clarifying assessment.¹⁴³

Setting specific educational goals and determining how best to achieve them is an unfamiliar task for most law teachers in the United States. We can be guided by the work that our colleagues are doing in the United Kingdom and elsewhere. For example, clear learning objectives have been established for each course in the Diploma in Legal Practice Program at the Glasgow Graduate School of Law in Scotland.¹⁴⁴ Some examples are set forth below to illustrate how one

¹⁴⁰ MACCRATE REPORT, *supra* note 31.

¹⁴¹ Law Society Framework, *supra* note 117, at 8.

¹⁴² Law Society of England and Wales, Legal Practice Course: Written Standards, Version 10 (September 2004) [hereinafter Legal Practice Course], *available at* <http://www.lawsociety.org.uk/documents/downloads/becominglpstandards.pdf>.

¹⁴³ Tom Drummond, A Brief Summary of the Best Practices in Teaching 6 (1994, 2002), <http://northonline.sccd.ctc.edu/eceprog/bstprac.htm>.

¹⁴⁴ GLASGOW GRADUATE SCHOOL OF LAW, COURSE HANDBOOK: DIPLOMA IN LEGAL PRACTICE 17-25 (2003-2004) (copy on file with Roy Stuckey).

might describe learning outcomes for particular courses. It should be noted that the Diploma in Legal Practice Program is a year long program that follows four years of undergraduate law study and precedes two years of supervised work experience and additional professional education.

Accountancy for Lawyers

Aim: To develop knowledge and understanding of information contained in accounts.

Learning Objectives: By the end of the course, students should be able to:

- Understand basic accounting concepts, the form and content of the annual accounts of trading enterprises and the workings of a standard accounting system.
- Interpret simple accounting information.
- Give basic advice to the different users of accounts, having regard to their particular interest in such accounts.

Conveyancing

Aim: To develop knowledge and understanding of basic domestic and commercial conveyancing transactions including the purchase, sale and leasing of residential and commercial properties.

Learning Objectives: By the end of the course students should be able to:

- Understand the mechanics of a straightforward purchase and sale transaction of a domestic property, including the importance of missives, the documentation required to be drafted to complete the conveyance and the responsibilities undertaken by the selling and purchasing solicitors.
- Understand the formalities required in revising a commercial lease, and drafting the appropriate documents.
- Understand how to create assured and short-assured tenancies, to draft the appropriate documentation, and the role which any lender to a landlord would have, and explain and discuss the practice rules, money laundering and accounts rules applicable to conveyancing transactions and the practice management and client care implications of conveyancing, including letters of obligation and accounting to the client.

Civil Court Practice: Civil Procedure and Civil Advocacy & Pleadings

Aim: To develop skills in relation to the conduct, funding and resolution of civil litigation.

Learning Objectives: By the end of the course, students should be able to:

- Interview and advise clients in relation to straightforward or relatively straightforward problems.
- Take basic precognitions.
- Draft basic pleadings.
- Demonstrate a practical working knowledge of the rules of civil procedure in the sheriff court.

- Explain and discuss the different ways in which civil litigation may be funded.
- Explain and discuss how actions are settled, including the role played by negotiation.
- Conduct a basic negotiation.
- Explain and discuss the rules of professional ethics and conduct applicable to civil litigation and dispute resolution.

Criminal Court Practice: Criminal Procedure and Criminal Advocacy & Pleadings

Aim: To develop skills in relation to criminal advocacy and procedure.

Learning Objectives: By the end of the course, students should be able to:

- Understand summary criminal procedure.
- Identify issues of competency, relevancy, and other preliminary matters in connection with summary criminal complaints.
- Explain and discuss what is involved in preparing for a summary criminal trial, and how such a trial is conducted.
- Demonstrate an understanding of the nature of criminal advocacy, including the ethical considerations applicable to it.
- Explain and discuss the rules of professional practice applicable to criminal advocacy, including registration for the provision of criminal legal assistance.
- Demonstrate an awareness of the different appellate procedures applicable to summary criminal procedure, and the sentencing powers available to the summary criminal courts.
- Understand the basics of solemn procedure and appeals advocacy skills.

Financial Services and Tax

Aim: To develop knowledge and understanding of the provision and regulation of financial services.

Learning Objectives: By the end of the course, students should be able to:

- Explain and discuss the various forms of financial services available for clients, the regulation of the provision of financial services, including investment protection, complaints procedures and compensation.
- Advise clients in relation to basic investment decisions, including concepts of risk, advantages/disadvantages, flexibility, portfolio planning and charging structures.
- Explain and discuss the taxation implications in relation to investments, and the general economic environment and context against which advice should be considered.
- Explain, discuss and problem solve typical ethical difficulties arising in everyday provision of financial services.

Practice Management

Aim: To develop knowledge and understanding of practice management skills required in professional practice, including financial and accounting issues associated with the running of a law practice.

Learning Objectives: By the end of the course, students should be able to:

- Identify and understand the issues involved in the concepts of client care, risk management, time management, file management and case load management.
- Identify and understand the role played by information technology in a legal practice.
- Identify and understand the role of a trainee in a legal office in relation to its partners, employees, clients and outside agencies with which it deals.
- Demonstrate a basic understanding of the accounts rules, cash room procedures, the money laundering regulations, credit control, outlays on behalf of clients, charging fees to clients and arrangements for payment of fees and outlays.

Private Client

Aim: To develop the practical skills of taking instructions, preparing wills, administering executries, trusts and curatories.

Learning Objectives: By the end of the course, students should be able to:

- Take instructions from a client for the preparation of a will.
- Advise the client on basic matters including the giving of simple tax planning advice.
- Draft a suitable will for a client avoiding legal pitfalls and taking account of the tax implications.
- Investigate the estate and prepare the inventory of a simple estate, calculate inheritance tax on death and lifetime gifts, make over the estate to the beneficiaries, produce an account of the executor's intromissions with the funds in the estate, demonstrate an awareness of the implications of income tax and capital gains tax on the executries and beneficiaries, and demonstrate an ability to ascertain those entitled to prior rights, legal rights and the free estate under the law of intestacy.
- Draft a deed appropriate to the various types of *inter vivos* and *mortis causa* trusts, taking account of the tax implications of each.
- Prepare basic trust accounts.

Professional Ethics

Aim: To develop knowledge and understanding of the ethical principles governing the conduct of lawyers in Scotland enabling the identification of ethical problems as they arise in everyday legal practice.

Learning Objectives: By the end of the course, students should be able to:

- Explain and discuss the systems, practice rules and voluntary codes which regulate the legal profession in Scotland.
- Explain and discuss the concepts of: risk management; negligence; incompetence; inadequate professional service and misconduct; conflict of interest; client care in the context of the professional obligations of a solicitor to a client; the duties of a solicitor to the court and to professional colleagues; professional responsibilities in society; and methods of dealing with ethical problems.
- Explain and discuss and problem solve typical ethical difficulties arising in everyday legal practice.

As mentioned earlier regarding the need to articulate outcomes for the program of instruction, articulating course specific outcomes is not an easy task and law teachers may want to work collaboratively to develop them and seek help from our more experienced colleagues in the United Kingdom and elsewhere.

As a starting point, law teachers may want to ask practicing lawyers what new lawyers need to know, understand, and be able to do when they begin practice. We could then examine the content of our courses, perhaps with the aid of practicing lawyers, and ask what beginning lawyers really need to know and be able to do.

E. Aim to Develop Competence – The Ability to Resolve Legal Problems Effectively and Responsibly.¹⁴⁵

Principle: The program of instruction aims to develop competence, and graduates demonstrate at the point of admission the ability to solve legal problems effectively and responsibly, including the ability to:

- work with clients to identify their objectives, identify and evaluate the merits and risks of their options, and advise on solutions;
- progress civil and criminal matters towards resolution using a range of techniques and approaches;
- draft agreements and other documentation to enable actions and transactions to be completed; and
- plan and implement strategies to progress cases and transactions \ expeditiously and with propriety.¹⁴⁶

¹⁴⁵ The Law Society included “effective approaches to problem solving” as one of the skills that law school should teach. We do not think it belongs in a list of skills because it is “the” skill of lawyering. We also removed the “ability to complete legal transactions and progress legal disputes towards resolution” from the Law Society’s list of five core competencies because we believe this is a statement about the central goal of a program of legal education that aims to prepare students for practice, not just one of the categories of competence. We think a lawyers’ ability to resolve disputes and process legal transactions are encompassed within the framework of “problem-solving.”

¹⁴⁶ Law Society Framework, *supra* note 117, at Annex 1, § B. The Law Society also included in its list of requisite abilities “the ability to establish business structures and transact the sale or purchase of a business,” “the ability deal with various forms of property ownership and transactions,” and “the ability to gain a grant of representation and administer an estate,” but we thought these were too specific to include on a list of competencies that all law graduates should possess on day one in practice.

Comments:

The primary reason why all law schools in the United States exist is to prepare students for entry into the legal profession. “Amid the useful varieties of mission and emphasis among American law schools, the formation of competent and committed professionals deserves and needs to be the common unifying purpose.”¹⁴⁷

Achieving this goal requires schools to design and offer programs of instruction that aim to take novice learners, help them develop basic competence, and equip them to develop into expert problem-solvers. “The mark of professional expertise is the ability to both act and think well in uncertain situations. The task of professional education is to facilitate novices’ growth into similar capacities to act with competence, moving toward expertise.”¹⁴⁸

The following definition of professional competence for lawyers was adapted with very few changes from a definition of professional competence for physicians.

Professional competence is the habitual and judicious use of communication, knowledge, technical skills, legal reasoning, emotions, values, and reflection in daily practice for the benefit of the individual, organization, or community being served. Competence builds on a foundation of basic professional skills, legal knowledge, and moral development. It includes a cognitive function – acquiring and using knowledge to solve real life problems; an integrative function – using legal and factual data in legal reasoning;¹⁴⁹ a relational function – communicating effectively with clients, colleagues, and others; and an affective/moral function – the willingness, patience, and emotional awareness to use these skills judiciously and humanely. Competence depends on habits of mind, including attentiveness, critical curiosity, self-awareness, and presence. Professional competence is developmental, impermanent, and context-dependent.¹⁵⁰

Competence requires the integrative application of knowledge, skills, and values. “Professional competence is more than a demonstration of isolated competencies, when we see the whole, we see its parts differently than when we see them in isolation.”¹⁵¹ Competence requires client-centered behaviors such as responding to client’s emotions and participatory decision-making. It has affective and moral dimensions. “Competence depends on habits of mind that allow the practitioner to be attentive, curious, self-aware, and willing to recognize and correct errors.”¹⁵² Competence is context dependent in that it is a statement of relationship between an ability (in the person), a task (in the world), and the legal framework and specific contexts in which those tasks occur. Competence is developmental, and it is difficult to determine which aspects of competence should be acquired at which stage of professional education or how best to measure it.

¹⁴⁷ SULLIVAN ET AL., *supra* note 7, at xvii.

¹⁴⁸ *Id.* at xii.

¹⁴⁹ The physicians’ version says “using biomedical and psychosocial data in clinical reasoning,” instead of “using legal and factual data in legal reasoning.”

¹⁵⁰ Ronald M. Epstein, MD, & Edward M. Hundert, MD, *Defining and Assessing Professional Competence*, JAMA, Jan. 9, 2002, at 226, 226-27.

¹⁵¹ *Id.* at 227.

¹⁵² *Id.* at 228 (citation omitted).

The Carnegie Foundation's report on legal education refers to the "three apprenticeships of professional education" to explain its understanding of professional competence.

As understood in contemporary learning theory, the metaphor of apprenticeship sheds useful light on the practices of professional education. In these recent Carnegie Foundation studies and reports on professional education, we use the metaphor but extend it to the whole range of imperatives confronting professional education. So, we speak of three apprenticeships. The signature pedagogies of each professional field all have to confront a common task: how to prepare students for the complex demands of actual professional work – to think, to perform, and to conduct themselves like professionals. The common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment upon which each profession rests.

Drawing upon contemporary learning theory, one can consider law, medical, divinity, or engineering schools as sites to which students come to be inducted into all three of the dimensions of professional work: its way of thinking, performing, and behaving. For the sake of their future practice, students must gain a basic mastery of specialized knowledge, begin acquiring competence at manipulating this knowledge under the constrained and uncertain conditions of practice, and identify themselves with the best standards and in a manner consistent with the purposes of the profession. Yet within the professional school, each of these aspects of the whole ensemble tends to be the province of different personnel, who often understand their function differently and may be guided by different, even conflicting goals.

The first apprenticeship, which we call intellectual or cognitive, focuses the student on the knowledge and way of thinking of the profession. Of the three, it is most at home in the university context since it embodies that institution's great investment in quality of analytical reasoning, argument, and research. In professional schools, the intellectual training is focused on the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.

The students' second apprenticeship is to the forms of expert practice shared by competent practitioners. Students encounter this practice-based kind of learning through quite different pedagogies from the way they learn the theory. They are often taught by different faculty members than those through whom they are introduced to the first, conceptual apprenticeship. In this second apprenticeship, students learn by taking part in simulated practice situations, as in case studies, or in actual clinical experience with real clients.

The third apprenticeship, which we call the ethical-social apprenticeship, introduces students to the purposes and attitudes

that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.¹⁵³

In order to develop competent graduates, therefore, law schools need to emphasize the development of students' expertise in three different areas: legal analysis, training for practice, and development of professional identity.¹⁵⁴ They must attend to all three areas of emphasis, and do so in an integrative fashion, or their graduates will not be prepared for practice. "The students must learn abundant amounts of theory and vast bodies of knowledge, but the 'bottom line' of their efforts will not be what they know, but what they can do. They must come to understand well in order to act competently, and they must act competently in order to serve responsibly."¹⁵⁵

According to the authors of the Carnegie Foundation's report, the goals of legal education should be to give students the fundamental techniques, as well as the patterns of reasoning, that make up the craft of law; the ability to grasp the legal significance of complex patterns of events; the skills of interviewing, counseling, arguing, and drafting of a whole range of documents; and the intangible qualities of expert judgment: the ability to size up a situation well, discerning the salient features relevant not just to the law but to legal practice, and, most of all, knowing what general knowledge, principles, and commitments to call on in deciding on a course of action.¹⁵⁶

Therefore, the goal of professional education cannot be analytic knowledge alone or, perhaps, even predominately. Neither can it be analytic knowledge plus merely skillful performance. Rather, the goal has to be holistic: to advance students toward genuine expertise as practitioners who can enact the profession's highest levels of skill in the service of its defining purpose.¹⁵⁷

In practice, competence is the ability to resolve problems, using legal knowledge and skills and sound professional judgment. The core function of practicing lawyers is to help people and institutions resolve legal problems. This includes helping clients avoid legal problems, as well as helping them resolve disputes, process legal transactions, and engage in planning. The central goal of legal education, therefore, should be to teach students how to resolve legal problems.¹⁵⁸ "Educational programs have the important ultimate purpose of teaching

¹⁵³ SULLIVAN ET AL., *supra* note 7, at 9-11.

¹⁵⁴ *Id.* at xviii-xix.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *Id.* at 135.

¹⁵⁷ *Id.* at 199.

¹⁵⁸ The notion that developing problem-solving skills is the end goal, and other aspects of legal education are simply the means to this end is not a novel concept. Gary Blasi wrote "[a]t bottom, lawyering entails solving (or making worse) problems of clients and others, under conditions of extraordinary complexity and uncertainty, in a virtually infinite range of set-

students to solve problems.”¹⁵⁹

[M]ost lawyers spend most of their time trying to solve problems. Those problems consist of raw facts (not yet distilled into the short, coherent story laid out in the appellate court opinion) – facts presented by clients, along with some question like “Legally speaking, how do I get myself out of this mess?” or “How do I plan my affairs to avoid getting into a mess in the first place?”

If our job is to teach students how to “think like lawyers,” then we should train them to solve such a problem, because that is the kind of thinking that lawyers must actually do. But – you reply – law schools cannot spend their scarce academic resources teaching students every single skill they will need in law practice – how to bill clients, how to manage a law office, how to find the courthouse. True, but problem-solving is not like any of those activities. Problem-solving is the single intellectual skill on which all law practice is based.¹⁶⁰

Students arrive in law school with problem-solving skills they developed dealing with problems before law school. Although these skills provide a foundation on which students can build their legal problem-solving skills, legal problems require specialized skills that must be acquired after entering law school.

[P]roblem solving focuses on the “whole picture” of what lawyers do, and thus provides a wonderful compendium of skills taught in law school. Any problem solver must have competencies or, at minimum, an awareness of the skills of legal analysis, legal writing, negotiation, client counseling, and mediation. Thirdly, creative problem solving involves not only legal skills, but also development of our cognitive, heuristic thought processes. The ambiguous situations of law practice require more original thought than is taught through appellate cases. In fact, the narrow analysis of appellate cases, particularly in the second and third years, may stifle students’ development of original thinking.¹⁶¹

Law schools give students some of the tools they need to solve legal problems. Students acquire legal analytical, writing, and research skills, and an overwhelming amount of doctrinal knowledge. However, law teachers typically do not explain that the purpose of learning the knowledge of the domain “is not on acquiring information as such so much as learning the concepts and procedures that enable the expert to

tings.” Blasi, *supra* note 15, at 317. Stephen Nathanson made the ends-means analogy in *The Role of Problem-Solving in Legal Education*, 39 J. LEGAL EDUC. 167, 182 (1989). He also concluded that problem-solving is “the essence of what lawyers are supposed to do” and that “the development of problem-solving skill should be made the primary goal of legal education.” *Id.* at 168, 182. Tony Amsterdam discussed the central importance of teaching problem-solving and “ends-means thinking” in Amsterdam, *supra* note 46, at 613-14.

¹⁵⁹ ROBERT M. GAGNE, *THE CONDITIONS OF LEARNING AND THEORY OF INSTRUCTION* 195 (1985).

¹⁶⁰ Myron Moskowitz, *Beyond the Case Method: It’s Time to Teach With Problems*, 42 J. LEGAL EDUC. 241, 245 (1992) (citations omitted).

¹⁶¹ Linda Morton, *Teaching Creative Problem Solving*, 34 CAL. W. L. REV. 375, 379 (1998) (citations omitted).

use knowledge to solve problems.”¹⁶²

Nor do law schools give much direct attention to helping students develop problem-solving skills. As Linda Morton observed, law “students are well versed in legal analysis, but not in creative thinking that the demands of law practice now require. It used to be that an educated lawyer could develop many of the skills of creative problem solving in practice but, with our current state of increasing globalization and interdisciplinary interaction, this is no longer true. In order to better equip our students for future practice, teaching methods and principles of creative problem solving is essential.”¹⁶³

Mark Aaronson describes a problem-solving approach for making good decisions with roots in business education and an easy to remember acronym.

That approach, which is intended for a general audience but is easily adaptable to different lawyering tasks, sets out and discusses in ordinary language and with everyday examples eight critical elements in making good decisions. The first four elements are the touchstone of any sound problem-solving methodology: problem definition; setting objectives; identifying alternatives; and evaluating consequences. In setting out what is meant by each, the architects of this approach underscore the importance of perspective and framing in how problems are defined and the centrality of using objectives both to refine initial problem definitions and in identifying alternatives and assessing their consequences. The fifth element entails structuring how to make tradeoffs among alternatives and objectives before making a final decision. The other three elements are not so much specific steps in a problem-solving process as essential considerations that need to be taken into account at critical, decision-making junctures. They involve coming to grips with uncertainty in a rational fashion, acknowledging subjective differences in risk tolerance, and accounting for the linkages between and among decisions. The easy-to-remember acronym that summarizes this approach is PrOACT (Problems, Objectives, Alternatives, Consequences, Tradeoffs).¹⁶⁴

Thus, a key part of problem-solving skill is the ability to use an analytic methodology that focuses on the process of how to identify objectives and ways for accomplishing them – “ends-means thinking.” This “problem analysis” methodology, however, is part of an overall problem-solving process that also involves the use of decision-making techniques and the exercise of sound practical judgment.

[T]he progression from novice to expert is the opposite of the common belief that learners simply move from concrete examples toward gradually more abstract conceptions. Instead, the Dreyfuses show that mature skill acquisition moves from a distanced manipulation of clearly delineated elements of a situation according to formal rules toward involved behavior based on an accumulation of concrete experience. Over time, the learner gradually develops

¹⁶² SULLIVAN ET AL., *supra* note 7, at 8.

¹⁶³ Morton, *supra* note 161, at 379 n.17.

¹⁶⁴ Aaronson, *supra* note 33, at 22 (citations omitted).

the ability to see analogies, to recognize new situations as similar to whole remembered patterns, and, finally, as an expert to grasp what is important in a situation without proceeding through a long process of formal reasoning. Sometimes called expert “intuition” or judgment,” such ability is the goal of professional training.¹⁶⁵

Developing competence in novice lawyers is a daunting challenge, but one well worth pursuing.

Research validates the widespread belief that developing professional judgment takes a long time, and much experience, to develop. It cannot typically be achieved within three years of law school, no matter how well crafted the students’ experience. But those years in law school can give students a solid foundation and, as they begin their careers in the law, useful guidance on what they need to continue to develop – if the curriculum and teaching in law school are conceived and carried out with the intentional goal of promoting growth in expertise. Knowing the end is an essential step toward figuring out the best means for getting to it. If the final aim of legal education is to foster the development of legal expertise and sound professional judgment, then educators’ awareness of the basic contours of the path from novice to expert, along with appropriate steps along the way, are very important.¹⁶⁶

The kind of careful instruction, study, practice, and reflection that will help students more quickly become effective, responsible problem-solvers can and should occur in law school, even though students’ problem-solving expertise will not fully develop until years after graduating from law school. Helping students acquire an understanding of legal problem-solving and to begin developing their expertise as problem-solvers is the most important task of legal education.

F. Help Students Acquire the Attributes of Effective, Responsible Lawyers.

Principle: Graduates have and are able to demonstrate at the point of admission to practice the attributes of effective, responsible lawyers, which include the following knowledge, understandings, skills, and abilities:

- **self-reflection and lifelong learning skills,¹⁶⁷**
- **intellectual and analytical skills,**
- **core knowledge of the law,**
- **core understanding of the law,¹⁶⁸**

¹⁶⁵ SULLIVAN ET AL., *supra* note 7, at 136.

¹⁶⁶ *Id.* at 135.

¹⁶⁷ The Law Society included “problem-solving skills” which we are treating as the central goal of legal education. We added “self-reflection and lifelong learning skills” which are probably implicitly included within the Law Society’s statement, but we believe such skills should be explicitly emphasized.

¹⁶⁸ The Law Society combined core legal knowledge and understanding as a single competency, but described the components of them separately, as we show here. The Law Society explained that the distinction between knowledge and understanding is suggested to indicate the emphasis to be placed, pre qualification, on the different aspects and the required capabilities of individuals to work with and manipulate their knowledge base. Knowledge

- professional skills, and
- professionalism.¹⁶⁹

The following sections expand and comment on these attributes of effective, responsible lawyers.

1. Self-Reflection and Lifelong Learning Skills.

Principle: Graduates demonstrate self-reflection and lifelong learning skills.

Comments:

All professionals must be lifelong learners. “Legal employers, clients and others expect that, because the young lawyer has a law degree, she . . . possesses the ability to engage in self-regulated learning after law school.”¹⁷⁰

Law school graduates should be skillful in planning their learning by setting goals and identifying strategies for learning based on the task, their goals, and self-awareness of their personal learning preferences. They should be able to implement those strategies, monitoring and reflecting on their learning efforts as they work, and making any necessary adjustments in those strategies.

The key skill set of lifelong learners is reflection skills.¹⁷¹ The entire law school experience should help students become expert in reflecting on their learning process, identifying the causes of both successes and failures, and using that knowledge to plan future efforts to learn with a goal of continuous improvement.¹⁷² The United Kingdom Centre for Legal Education explains self-regulated, lifelong learning in similar terms:

Lifelong learning demands . . . the ability to think strategically about your own learning path, and this requires the self-awareness to know one’s own goals, the resources that are needed to pursue them, and your current strengths and weaknesses

indicates familiarity with an area, recollection of key facts, rules, methods and procedures. Understanding indicates a higher level capacity to work with, manipulate and apply knowledge including in unfamiliar situations.

¹⁶⁹ The term used by the Law Society is “a practical understanding of the values, behaviors, attitudes, and ethical requirements of a lawyer.” We think “professionalism” captures this, but it also implies that the goal should be not only to give students an “understanding” of professionalism, but also to instill a commitment to perform in a professional manner. Two factors determine whether a lawyer will perform in a professional manner: whether the lawyer is *capable* of performing professionally (which requires understanding) and whether the lawyer is *committed* to performing professionally (which requires motivation).

¹⁷⁰ Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 76 (2000). See also Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. D.C.L. L. REV. 447.

¹⁷¹ See U.K. Ctr. for Legal Educ., Higher Educ. Acad., *What’s Reflection Got to Do With It?*, <http://www.ukcle.ac.uk/resources/reflection/reflection.html> (last visited June 27, 2006).

¹⁷² The best known works on reflective learning by professionals are by Donald A. Schön: *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983), and *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231 (1995). See also Schwartz, *supra* note 170, at 452-66.

in that regard You have to be able to monitor your progress; if necessary even to measure it; to mull over different options and courses of development; to be mindful of your own assumptions and habits, and to be able to stand back from them and appraise them when learning gets stuck; and in general to manage yourself as a learner – prioritizing, planning, reviewing progress, revising strategy and if necessary changing tack.¹⁷³

It is unlikely that three years of law school will fully prepare students for practice, but law schools can protect their graduates' clients by helping students become proficient lifelong learners who can realistically evaluate their own level of performance and develop a plan for improving.

2. Intellectual and Analytical Skills.

Principle: Graduates demonstrate the intellectual and analytical skills required to:

- apply methods and techniques to review, consolidate, extend, and apply knowledge and understanding and to initiate and carry out projects; and
- critically evaluate arguments, assumptions, abstract concepts and data to make judgments and to frame appropriate questions to achieve a solution, or identify a range of solutions to a problem.¹⁷⁴

Comments:

The intellectual and analytical skills required to practice law effectively and responsibly include practical judgment, analytical skills, and self-efficacy.

a. Practical judgment.

Principle: Graduates demonstrate practical judgment.

Comments:

In order to succeed as lawyers, students must acquire the habit of mind needed for competent law practice, which in medical education is referred to as “clinical judgment” and by some legal scholars as “practical judgment” or “practical wisdom.”

This twofold aspect of professional expertise [fluency in both the engaged mode of narrative thinking characteristic of everyday practice and the detached mode of analytical thinking emphasized in case-dialogue teaching] is captured by Eliot Freidson when he describes medical education's aim as forming a “clinical” habit of mind so that physicians could “work as consultants who must intervene [with specialized, esoteric knowledge] in everyday, practical

¹⁷³ *What's Reflection Got to Do With It?*, *supra* note 171 (quoting G. CLAXTON, WISE UP: THE CHALLENGE OF LIFELONG LEARNING 14 (1999)).

¹⁷⁴ Law Society Framework, *supra* note 117, at Annex 1, § A. The Law Society also included in this section “communication skills,” which it defined as the ability to “communicate information, ideas, problems, and solutions to both specialist and non-specialist audiences.” We consider communication skills to be among the professional skills that a lawyer should possess. Professional skills needed for competent law practice are described later in this Chapter.

affairs.” In order to treat the patient, the clinician must be able to move back and forth between detached analysis of the medical condition and emphatic engagement with the distressed patient. Medical education clearly demonstrates that this clinical habit of mind can, like analytic thinking, also be developed within a formal education program.¹⁷⁵

Practical judgment is “the key faculty needed when lawyers seek to identify, assess, and propose concrete solutions in particular and often complex social circumstances.”¹⁷⁶ In law practice, it is the norm rather than the exception for lawyers to encounter situations where it is not clear what outcomes would best serve clients’ interests and where lawyers must weigh multiple and complex options to find the most appropriate means for achieving any outcome. Determining the best course of action in such situations requires the exercise of practical judgment.

Although skill in legal reasoning is not as closed a process of reasoning as sometimes supposed, everyday lawyering activities are even less subject to formally structured deliberation. The factual situations are almost always fraught with complications, contingencies, and uncertainties. The areas of inquiry have no pre-definable limits and include small and large matters. Whether gathering information, communicating with others, planning courses of action, or contemplating client options, attorneys constantly make judgment calls. A lawyer’s reliance on judgment runs the gamut from how to order and frame questions when interviewing or counseling clients, to what research leads to follow, to how to decide major issues of legal strategy, to how to identify and seek to reconcile conflicting moral obligations. What the client regards as the problem may or may not be the problem. There may be a legal solution, but it is not clear that it would be the best solution. In short, in the practice of law, how best to proceed and what exactly to say and do are almost always problematic.

In such situations, it is the lawyer’s capacity for reflective,¹⁷⁷ not determinative, judgment that is regularly tested. One’s ability to identify and apply the law is but one skill and one form of reasoning needed, and often enough not the most important. The critical attribute is not the attorney’s legal knowledge but his or her ability to bring to bear, competently and sensibly, the appropriate breadth and depth of knowledge, whether rooted in schooling or experience, that best addresses the particular matter at-hand. The high development of this capacity for reflective judgment is what accounts for good practical judgment in lawyering. It is a process of deliberation that involves the contextual synthesizing and prioritizing of a range of

¹⁷⁵ SULLIVAN ET AL., *supra* note 7, at 109.

¹⁷⁶ Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLINICAL L. REV. 247, 249 (1998). Other important articles related to teaching professional judgment are Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994); Blasi, *supra* note 15.

¹⁷⁷ “Reflective judgment is that process of reasoning we use to give coherence and direction to our thinking when matters are confusing and unsettled, and there is no initially obvious course of action to take or set formula to apply.” Aaronson, *supra* note 33, at 31.

factors, including facts, feelings, values, and general and expert knowledge, all at once. It is what is needed intellectually to reach a cohesive and balanced conclusion when there is no straightforward method for resolving competing concerns. When we have hard knowledge and are able to arrange key elements in a standardized and systematic fashion, we are back in the domain of formalized decision making, where the judgments made are determinant in nature.¹⁷⁸

Mark Aaronson described “six key characteristics and dynamics regarding the nature of practical judgment, as a concise overview of the kinds of considerations and perspectives that help to explain what accounts for good judgment generally, and in lawyering specifically.”¹⁷⁹

1. Practical judgment entails the application and tailoring of general knowledge to particular circumstances.
2. Practical judgment involves a dialogic process of deliberation or reasoning. Even when not engaged in discussions with others, one has to take into account how an event or situation looks from plural perspectives.
3. The critical dynamic in developing good lawyering judgment is the ability to be empathetic and detached at the same time. Empathy involves imaginatively putting oneself in someone else’s shoes.
4. Because the focus of practical judgment is on the just achievement of human ends, knowledge is not valued abstractly for its own sake but instrumentally in terms of how it can be used equitably for the betterment of humanity.
5. Practical lawyering judgment develops over time and with experience. Its nurturing and maturation require exposure to a variety of problem situations and repetitive practice.
6. Practical judgment intertwines intellectual and moral attributes. The connection originates with Aristotle’s concept of *phronesis* or practical wisdom, which he construed as both an intellectual and moral virtue.¹⁸⁰

It is particularly important for law schools to help students explore and understand the ethical and moral dimensions of legal work. “[T]here is obviously much more to lawyering than the instrumental solving of client problems. Lawyering also entails moral reason and ethical sense, just as law reflects and constitutes the

¹⁷⁸ *Id.* at 32-33.

¹⁷⁹ *Id.* at 34-37.

¹⁸⁰ In another article, Aaronson further explains the concept that practical wisdom has both intellectual and moral dimensions.

Aristotle’s capsule definition is as follows: “Practical wisdom is a rational faculty exercised for the attainment of truth in things that are humanly good and bad” [citing ARISTOTLE, *THE ETHICS OF ARISTOTLE: THE NICOMACHEAN ETHICS*, Book VI, at 177 (J.A.K. Thomson, trans., 1953)]. Like other cognitive faculties, practical wisdom involves how we know, perceive, reason, and think, but it also calls on our moral sensibilities. . . . The point is that how we exercise judgment in legal practice depends on both our mental development and our moral development. The impact of what we do is not just a matter of scholarly and experiential knowledge and acumen. It is also a reflection of our moral character and its effects on others.

Aaronson, *supra* note 176, at 258.

normative order of those who make and interpret it.”¹⁸¹ Only by attending to such matters can students acquire the ability to exercise practical judgment, a critical intellectual skill of effective, responsible lawyers.

Students arrive in law school with varying abilities to exercise judgment, but they do not have the professional knowledge or experience to exercise practical judgment in legal settings. Law schools have a special obligation to help students begin to develop practical judgment in legal settings, though the task neither begins nor ends in law school. For law schools “[t]o make judgment a curricular focus, rather than just an aside, requires coming to grips with not only what it means to say someone has and uses good judgment, but also to what extent and under what circumstances practical judgment is a skill and disposition that can be learned.”¹⁸²

b. Analytical skills.

Principle: Graduates demonstrate analytical skills.

Comments:

The ABA accreditation standards require law schools to provide all students instruction in the “legal analysis and reasoning” skills generally regarded as necessary for effective and responsible practice of law.¹⁸³ Law schools in the United States are particularly effective at teaching students how to engage in legal reasoning and helping them develop the skill that is described by many as “thinking like a lawyer.”

The form of “thinking like a lawyer” that most first year teachers strive to develop in their students is a way of analytical thinking that “provides an overarching framework that helps students construct complex forms of working knowledge about particular ways to reason, understand the law, and appreciate lawyers’ roles, while at the same time confronting them with subtle forms of uncertainty embedded in each of these major facets of a lawyer’s life.”¹⁸⁴ “Over time . . . this broadly encompassing, multi-faceted construct provides a framework through which students are taught to confront, engage, accept, and embrace the complex uncertainties that lawyers must ultimately accommodate and perhaps come to love.”¹⁸⁵

[A]t heart, “thinking like a lawyer” describes a unique educational process through which law faculty aid students in negotiating fundamental educational processes associated with legal reasoning, the law, and lawyers themselves. In particular, it forces students to “domesticate doubt” and offers pragmatic strategies

¹⁸¹ Blasi, *supra* note 15, at 396 (citations omitted). In a footnote following the first sentence, Blasi said, “[t]his point is made by critics of the MacCrate Report, who see it as interpreting lawyering only as an instrumental activity.” *Id.* at n.239. In a footnote following the second sentence, Blasi wrote, “[i]n my view, developments in cognitive science may have significant implications for our understanding of these areas as well. Two noteworthy examples are MARK JOHNSON, *MORAL IMAGINATION: IMPLICATIONS OF COGNITIVE SCIENCE FOR ETHICS* (1993), and Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 105 (1989).” *Id.* at n.240.

¹⁸² Aaronson, *supra* note 176, at 249.

¹⁸³ Standards 302(a)(2) and (a)(4), ABA STANDARDS, *supra* note 28, at 17-18.

¹⁸⁴ Wegner, *Thinking Like a Lawyer*, *supra* note 47, at 9.

¹⁸⁵ *Id.*

to do so: the recurring use of questions, a structured approach to reasoning, a phase shift in the nature of knowledge, conventions of legal literacy, an abstracted legal world, and superficial exposure to lawyers' roles and professional norms."¹⁸⁶

"Thinking like a lawyer" involves:

- recurrent use of questions that are gradually internalized,
- structured forms of reasoning that become routine,
- new concepts of "knowing" that integrate uncertainty at their root,
- exposure to a limited universe of law and the legal system,
- development of "legal literacy" involving careful reading, mastery of vocabulary, and conventions for textual interpretation,
- treating professional roles as a given, rather than exploring their depth, and
- exposure to professional norms to foster adaptation without confronting student views.¹⁸⁷

The analytical and thinking skills described above are essential for law students to develop. Law schools, however, tend to continue teaching these skills in the second and third year of law school, after most students have become competent in this form of analysis, rather than helping students develop other important skills and values. The analytical skills taught in the first year are the skills that appellate judges use in deciding cases, rather than the ends-means analytical skills that lawyers use in solving clients' problems.

Ends-means thinking is at the heart of how to develop and apply a problem-solving approach, no matter what the context. Anthony Amsterdam classically describes ends-means thinking as follows:

This is the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved or the opportunity might be realized. What is involved is making a thorough, systematic, and creative canvass of all the possible goals or objectives in the situation – the "end points" to which movement from the present state of affairs might be made – then making an equally systematic and creative inventory of the possible means or routes to each goal, then analyzing the ways in which and the extent to which the various means and goals are compatible or incompatible with one another, seeking means to reconcile them or to prioritize them to the extent that they are irreconcilable.

The purpose of ends-means thinking is to introduce newcomers in a profession to how they initially might go about thinking through a problem. For Amsterdam, it provides important guidance on

¹⁸⁶ *Id.* at 1.

¹⁸⁷ *Id.* at 10.

answering the question “how on earth do I get started in dealing with this situation?”

This kind of thinking – this kind of problem solving – is not something that we should assume students pick up on their own.¹⁸⁸

As the Carnegie Foundation’s report on legal education put it, “[t]o ‘think like a lawyer’ emerges as the ability to translate messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client’s cause before a court or in negotiation.”¹⁸⁹

Law schools should continue teaching students the form of “thinking like a lawyer” they have taught for generations, but they should expand the scope of their instruction to help students learn more ways of thinking like a lawyer.

c. Self-efficacy.

Principle: Graduates demonstrate self-efficacy.

Comments:

An important aspect of helping students develop their intellectual skills is the concept of “self-efficacy.” “Self-efficacy refers to students’ beliefs about whether they have the ability to successfully master an academic task.”¹⁹⁰ Self-efficacy is “an individual’s estimate of his or her capability of performing a specific set of actions required to deal with task situations.”¹⁹¹ Four factors influence the strength of a student’s perceptions of her self-efficacy for performing a task: (1) the student’s current skill level, (2) the extent to which she has witnessed modeling from peers and from teachers (if the student has not yet become skilled at the task), (3) verbal persuasion regarding the difficulty of the task, and (4) the student’s current psychological state.¹⁹²

Students with high self-efficacy are better learners. Albert Bandura is the national expert in this field. He and many other educational researchers have consistently found a relationship between self-efficacy and academic achievement even after controlling for traditional measures of ability, such as the SAT or LSAT. Anastacia Hagan and Claire Ellen Weinstein summarize this research by saying, “[s]tudents with high self-efficacy have been shown to actively participate in learning activities, show greater effort and persistence and achieve higher levels of academic performance than students with low self-efficacy.”¹⁹³ In fact, in a synthesis and analysis of thirty-nine past self-efficacy studies, including studies at every

¹⁸⁸ Aaronson, *supra* note 33, at 21 (quoting Anthony G. Amsterdam, *Clinical Legal Education – A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 614 (1984)).

¹⁸⁹ SULLIVAN ET AL., *supra* note 7, at 46-47.

¹⁹⁰ Anastasia S. Hagan & Claire Ellen Weinstein, *Achievement Goals, Self-Regulated Learning, and the Role of Classroom Context*, in NEW DIRECTIONS FOR TEACHING AND LEARNING: UNDERSTANDING SELF-REGULATED LEARNING No. 63, at 43, 45 (Paul R. Pintrich ed., 1995).

¹⁹¹ Robert E. Wood & Edwin A. Locke, *The Relation of Self-Efficacy and Grade Goals to Academic Performance*, 47 EDUCATIONAL AND PSYCHOLOGICAL MEASUREMENT 1013, 1014 (1987). See also *id.*

¹⁹² Gregory Schraw & David W. Brooks, *Helping Students Self-Regulate in Math and Science Courses: Improving the Will and the Skill*, http://dwb.unl.edu/Chau/SR/Self_Reg.html (last visited June 27, 2006).

¹⁹³ Hagan & Weinstein, *supra* note 190, at 45.

education level from elementary school through college, investigators found that self-efficacy facilitates both performance and persistence.¹⁹⁴ In a set of four studies of undergraduates, researchers found that “self-efficacy has a significant relationship to academic performance, even with ability controlled.”¹⁹⁵

Unfortunately, the competitive atmosphere in United States law schools and negative messages to students about their competence and self-worth undermines rather than enhances students’ self-efficacy. Traditional teaching methods and beliefs that underlie them undermine “the sense of self-worth, security, authenticity, and competence among students. Law students get the message, early and often, that what they believe, or believed, at their core, is unimportant – in fact ‘irrelevant’ and inappropriate in the context of legal discourse – and their traditional ways of thinking and feeling are wholly unequal to the task before them.”¹⁹⁶

Law teachers should clearly articulate our educational goals, help students understand the techniques we are using to accomplish them and be careful not to ask students to demonstrate knowledge and skills until they have a fair opportunity to acquire them.

Particularly given the intellectual demands of the skills and values law students are learning, law professors should sequence instruction so that students have early success and therefore build self-efficacy.¹⁹⁷ In other words, law professors interested in teaching students case analysis skills would order their syllabi so that the students start with easier cases and build to more difficult ones. Likewise, all law professors should consider the order in which they teach the concepts under study. Perhaps, highly theoretical and difficult concepts such as estates in property law, personal jurisdiction in civil procedure, and consideration in contract law are not good places to start for new law school learners.

3. Core Knowledge of the Law.

- **the jurisdiction, authority, and procedures of the legal institutions and the professions that initiate, develop, interpret, and apply the law of relevant jurisdictions, including knowledge of constitutional law and judicial review;**
- **the rules of professional conduct (including the accounts rules);**
- and**
- **the regulatory and fiscal framework within which business and other legal transactions and financial services are conducted.**

4. Core Understanding of the Law.

- **the law of contract and tort and of parties’ obligations, rights, and remedies;**
- **criminal law;**
- **the legal concept of property and the protection, disposal, acquisition, and transmission of proprietary interests;**

¹⁹⁴ Karen D. Multon, Steven D. Brown & Robert W. Lent, *Relationship of Self-Efficacy Beliefs to Academic Outcomes: A Meta-Analytic Investigation*, J. COUNSELING PSYCHOL. 30, 34 (Jan. 1991).

¹⁹⁵ Wood & Locke, *supra* note 191, at 1021 & 1023.

¹⁹⁶ Krieger, *Institutional Denial*, *supra* note 76, at 125.

¹⁹⁷ PATRICIA L. SMITH & TILLMAN J. RAGAN, INSTRUCTIONAL DESIGN 118, 139 and 202 (2d ed. 1999).

- equitable rights, titles, and interests;
- the range of legal protections available to the individual in society in civil and criminal matters and with regard to their human rights;
- legal personality¹⁹⁸ and business structures; and
- the values and principles on which professional rules are constructed.¹⁹⁹

Principle: Graduates demonstrate adequate core knowledge and understanding of the law.

Comments:

Law schools must give students “an adequate level of knowledge of the applicable legal doctrine. Before a novice lawyer can embark on solving any legal problem, she has to have a knowledge base to organize her experience, to communicate her ideas to others, to rely on for handling difficult situations, and to develop creative solutions.”²⁰⁰ While everyone would agree that students should acquire a body of knowledge before practicing law, reasonable people would disagree about the particulars. This principle broadly describes the requisite body of knowledge to put something on the table to consider.

As noted earlier, the Law Society of England and Wales combined core legal knowledge and understanding as a single competency, but described the components of them separately. The Law Society explained that the distinction between knowledge and understanding is suggested to indicate the emphasis to be placed, pre-qualification, on the different aspects and the required capabilities of individuals to work with and manipulate their knowledge base. Knowledge indicates familiarity with an area, recollection of key facts, rules, methods and procedures. Understanding indicates a higher level capacity to work with, manipulate, and apply knowledge including in unfamiliar situations.

In the United Kingdom, students acquire their core legal knowledge as undergraduate students in law school, and additional subjects are covered in graduate programs operated by the professional organizations. In England and Wales, the “foundations of legal education” taught by law schools include seven substantive courses in addition to legal research: Criminal Law, Equity and Trusts, Law of the European Union, Obligations I (contract); Obligations II (tort), Property Law, and Public Law. In Ireland, there are eight core courses similar to those in England, except they include Company Law and replace Public Law with Constitutional Law. In Scotland, there are eight “qualifying subjects:” Public Law and the Legal System, Scots Private Law, Scots Criminal Law, Scots Commercial Law, Conveyancing, Evidence, Taxation, and European Community Law.

¹⁹⁸ According to BLACK’S LAW DICTIONARY 1163 (7th ed. 1999), “personality” is “[t]he legal status of one regarded by the law as a person; the legal conception by which the law regards a human being or an artificial entity as a person. – Also termed *legal personality*.” BLACK’S also includes the following quote. “Legal personality . . . refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities,” citing GEORGE WHITECROSS PATON, A TEXTBOOK OF JURISPRUDENCE 393 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

¹⁹⁹ Law Society Framework, *supra* note 117, at Annex 1, § A.

²⁰⁰ See Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149, 207 (2004).

The accreditation standards for law schools in the United States do not require law schools to teach many specific subjects. The standards do not designate any specific substantive law topics that should or must be taught by law schools. Instead, they require law schools to offer instruction in “the substantive law generally regarded as necessary to effective and responsible participation in the legal profession.”²⁰¹

The accreditation standards do require law schools to provide all law students instruction in “the history, goals, structure, values, and responsibilities of the legal profession and its members.”²⁰² The Carnegie Foundation’s report encourages law schools to include instruction in “the history of American legal education, legal practice, and professions more broadly. Like landmark cases, biographies of notable figures in the law are valuable as concrete manifestations of the principles under discussion.”²⁰³

Although the accreditation standards give law schools a great deal of flexibility in curriculum design and coverage, the reality is that most law school curriculums are very similar and emphasize teaching substantive law far beyond core knowledge and understanding and far beyond what typical law school graduates need to know and understand on their first day in law practice. It is precisely this emphasis on substantive law, driven in part by the emphasis given to substantive law by bar examiners, that weakens the curriculum in most United States law schools.

Gerry Hess and Stephen Gerst conducted a survey of the Arizona Bar in 2005 and asked those lawyers and judges to assess the importance of various categories of legal knowledge to the success of an associate at the end of the first year of practice in a small, general practice firm.²⁰⁴ Only four courses were rated by more than 70% of the respondents as “essential” or “very important:”

1. Civil Procedure (87%).
2. Professional Responsibility (Arizona and Model Rules) (82%).
3. Contracts (80%).
4. Evidence (74%).

Only three other subjects received a rating higher than 50%:

1. Remedies (damages, injunctions, enforcement of judgments) (68%).
2. Torts (67%).
3. Property (real, personal, landlord) (62%).

The lawyers and judges in Arizona apparently agree with Harry Edwards that “we should stop attempting to teach so much substance in the basic law school program. We should not attempt to prepare someone to practice labor law,

²⁰¹ Standard 302(a)(1), ABA STANDARDS, *supra* note 28, at 17-18.

²⁰² Standard 302(a)(5), *id.* at 18. Bob MacCrate suggested that a goal for a program of law school instruction should be stated as “‘making students aware’ of such things as ‘the organization of the profession’ in bar associations, the articulation by professional organizations of ‘professional values,’ the relation of those values to the rule of law and lawyers’ public service role and the regulation of the profession by the Courts.” Letter from Robert MacCrate, Esq., to Professor Roy Stuckey (Sept. 15, 2004) (on file with Roy Stuckey).

²⁰³ SULLIVAN ET AL., *supra* note 7, at 16.

²⁰⁴ Gerry Hess & Stephen Gerst, Phoenix Int’l School of Law, Arizona Bench and Bar Survey and Focus Group Results (2005) (on file with Roy Stuckey). As discussed later, the survey also asked members of the bar to assess the importance of various skills and values.

environmental law, commercial transactions and the many other subjects that we teach.”²⁰⁵ Although people can reasonably disagree about which doctrinal subjects should be required for all students, Judge Edwards is not alone in reaching the following conclusion: “Nor does doctrinal education require three years of law school. Absent specialist training, it probably requires only the first year and part of the second; the remaining time should be used for clinical courses, as well as doctrinal and theoretical electives.”²⁰⁶

In 2000, the Australian Law Reform Commission made the following observations concerning the amount of substantive legal knowledge that law students should acquire before beginning law practice.

[A] requirement that students must “master” (or at least “know”) large bodies of substantive law ignores the stark reality that this substance changes dramatically over time – sometimes in a very short time. Where once it was possible to trace the slow and careful development of the common law, and identify with either the “bold” or “timorous” judges of the English superior courts, Justice Paul Finn has described Australians as “born to statutes”. . . .²⁰⁷

Thus, a student who “masters” taxation law or environmental law or social security law, but does not then work in these areas for a time, would find the substance of law almost unrecognizable a decade later; and a practitioner who relied significantly on what he or she learned in law school would soon, if unwillingly, become acquainted with the law of professional negligence.²⁰⁸

Accompanied by a commitment to facilitating “lifelong learning” for professionals, Australian law schools might consider adoption of an underlying philosophy which holds that “[i]n a changing environment, the best preparation that a law school can give its students is one which promotes intellectual breadth, agility and curiosity; strong analytical and communications skills; and a (moral/ethical) sense of the role and purpose of lawyers in society.”²⁰⁹

We endorse the observations and philosophy of the Australian Law Reform Commission. We encourage law schools and bar admissions authorities to reconsider the extent of substantive legal knowledge that lawyers should have on day one of law practice.

²⁰⁵ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 57 (1992).

²⁰⁶ *Id.* at 63.

²⁰⁷ AUSTRALIAN LAW REFORM COMMISSION, *supra* note 122, at para. 2.83.

²⁰⁸ *Id.* at ¶ 2.84.

²⁰⁹ *Id.* at ¶ 2.89.

5. Professional Skills.

- the application of techniques to communicate effectively with clients, colleagues, and members of other professions;
- the ability to recognize clients' financial, commercial, and personal constraints and priorities;
- the ability to advocate a case on behalf of others, and to participate in trials to the extent allowed upon admission to practice;²¹⁰
- effective use of current technologies and strategies to store, retrieve, and analyze information and to undertake factual and legal research;
- an appreciation of the commercial environment of legal practice, including the market for legal services;
- the ability to recognize and resolve ethical dilemmas;
- effective skills for client relationship management and knowledge of how to act if a client is dissatisfied with the advice or service provided;
- employment of risk management skills;
- the capacity to recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill, and to develop strategies that will enhance professional performance;
- the ability to manage personal workload and to manage efficiently, effectively, and concurrently a number of client matters; and
- the ability to work effectively as a member of a team.²¹¹

Principle: Graduates demonstrate adequate professional skills.

Comments:

This principle calls on law schools to help students develop a variety of skills, including concern about and skills for delivering legal services efficiently. It also points out the importance of teaching students to think about the effects of their actions on our society at large, the administration of justice, and the overall performance and reputation of the legal profession.

The scope and depth of skills instruction called for in this principle are somewhat greater than what the American Bar Association requires through its accreditation process. The ABA requires law schools to ensure that each student receive substantial instruction in “legal analysis and reasoning, legal research, problem solving and oral communication, . . . writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year,” and “other professional skills generally regarded as necessary for effective and responsible practice of law.”²¹² The ABA lists the following professional skills as some of the skills generally regarded as necessary for law practice: “[t]rial and appellate advocacy, alternative methods

²¹⁰ The Law Society’s language for the second part of this statement is “and to exercise the rights of audience available to all solicitors on admission.”

²¹¹ Law Society Framework, *supra* note 117, at Annex 1, § B. The Law Society included “effective approaches to problem solving” among the descriptive components of this competency, but we took it out because we believe that helping students become effective and responsible problem-solvers is the primary goal of legal education, not just a component of one category of competency.

²¹² Interpretation 302-2, ABA STANDARDS, *supra* note 28, at 17-18.

of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting.²¹³

It does not appear, however, that the ABA's rules will ensure that students receive instruction in all of the skills listed in the Standards or to any level of proficiency, because the accreditation standards also state that a school may satisfy the standard by "requiring students to take one or more courses having substantial professional skills components."²¹⁴ One course cannot equip students with the professional skills needed to practice law effectively and responsibly.

As mentioned earlier, in 2005 Gerry Hess and Stephen Gerst conducted a survey of the Arizona Bar.²¹⁵ They asked those lawyers and judges to assess the importance of various professional skills to the success of an associate at the end of the first year of practice in a small, general practice firm. Twelve skills were rated by more than 70% of the respondents as "essential" or "very important," and three more were rated that highly by more than 50% of the respondents.

1. Legal analysis and reasoning (96%).
2. Written communication (96%).
3. legal research (library and computer) (94%).
4. Drafting legal documents (92%).
5. Listening (92%).
6. Oral communication (92%).
7. Working cooperatively with others as part of a team (90%).
8. Factual investigation (88%).
9. Organization and management of legal work (88%).
10. Interviewing and questioning (87%).
11. Problem solving (87%).
12. Recognizing and resolving ethical dilemmas (77%).
13. Pretrial discovery and advocacy (64%).
14. Counseling (58%).
15. Negotiation (57%).

The importance and purposes of teaching skills in law school were described by William Twining:

One of the main objectives of legal training is to enable intending practitioners to achieve minimum standards of competency in basic skills before being let loose on the public; what constitutes such skills depends on a job analysis of what lawyers of different kinds in fact do: lawyer-jobs can be analysed into transactions or operations, which can be further broken down into tasks or sub-operations; a skill or skill-cluster denotes the ability to carry out a task to a specified standard. Minimum, acceptable competence is to be distinguished from excellence. It is the main function of primary legal education and training to ensure that all entrants to the profession exhibit minimum competence in a range of skills, measured by actual performances which satisfy articulated criteria under specified conditions.²¹⁶

²¹³ Standard 302(a)(2), (3), and (4), *id.* at 18.

²¹⁴ Interpretation 302-3, *id.* at 19.

²¹⁵ Hess & Gerst, *supra* note 204.

²¹⁶ WILLIAM TWINING, BLACKSTONE'S TOWER: THE ENGLISH LAW SCHOOL 168 (1994).

As Twining mentions, the basic objective is for all lawyers to achieve minimum standards of competence in basic skills before being let loose on the public. It is not clear whether law schools in the United States can bring students to an adequate level of proficiency to represent clients without supervision in three years. Even if they cannot, however, graduates and their clients would still benefit from more emphasis on skills instruction.

While it is easy to conclude that law students should be made aware of and receive instruction in all professional skills during law school, it is more difficult to determine which skills are the most important to develop during law school to a level of proficiency that will enable a school's graduates to provide effective, responsible legal services upon admission to the bar.

It is likely that law schools are currently doing an adequate job of helping students develop some forms of law-related reading skills, legal analysis and reasoning skills,²¹⁷ and legal writing and research skills, but they are giving much less attention to other important skills. Many students graduate without even an introduction to many of the basic skills of the legal profession, such as how to learn from experience, managing legal work, interviewing, counseling, negotiation and other forms of advocacy, and preparing pleadings and other legal documents. An expanded discussion of the most important skills for law students to acquire is in Chapter Five.

6. Professionalism.²¹⁸

- **appropriate behaviors and integrity in a range of situations;**
- **the capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.²¹⁹**

Principle: Graduates demonstrate professionalism.

Comments:

This principle calls on law schools to give students an understanding of the values, behaviors, attitudes, and ethical requirements of a lawyer and to infuse a commitment to them. In other words, it highlights the importance of teaching professionalism.²²⁰ Professionalism encompasses the formal rules of professional

²¹⁷ See earlier discussion of intellectual, analytical, and lifelong reasoning skills.

²¹⁸ A collection of descriptions of professionalism is located on the Professionalism of Lawyers and Judges website, <http://professionalism.law.sc.edu>.

²¹⁹ Law Society Framework, *supra* note 117, at Annex 1, § C.

²²⁰ In an earlier version of this document, we adapted the ACGME descriptions of competency related to professional values and formulated the following principle:

Graduates understand and are committed to the values of the legal profession, as manifested through a commitment to professional responsibilities, adhering to ethical principles, and being sensitive to a diverse client population. Graduates:

- demonstrate respect, compassion, and integrity; a responsiveness to the needs of clients and society that supercedes self-interest; accountability to clients, society, and the profession; and a commitment to excellence and on-going professional development,
- demonstrate a commitment to ethical principles pertaining to provision or with holding of legal services, confidentiality of client information, informed consent,

conduct, that is, the minimally required conduct of lawyers, but it also encompasses “what is more broadly *expected* of them, both by the public and by the best traditions of the legal profession itself.”²²¹

“Professionalism” is “the conduct, aims, or qualities that characterize or mark a profession or a professional person.”²²² Another definition is: “Professionalism is conduct consistent with the tenets of the legal profession as demonstrated by a lawyer’s civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.”²²³

The Supreme Court of Washington and the Washington State Bar define professionalism as follows:

“Professionalism” is no more, and no less, than conducting one’s self at all times in such a manner as to demonstrate complete candor, honesty, courtesy and avoidance of unnecessary conflict in all relationships with clients, associates, courts and the general public. It is the personification of the accepted standard of conduct that a lawyer’s word is his or her bond. It includes respectful behavior towards others, including sensitivity to substance abuse prevention, anti-bias or diversity concerns. It encompasses the fundamental belief that a lawyer’s primary obligation is to serve his or her clients’ interests faithfully and completely, with compensation only a secondary concern, acknowledging the need for a balance between the role of advocate and the role of an officer of the court, and with ultimate justice at a reasonable cost as the final goal.²²⁴

Our society expects lawyers to provide competent legal services that achieve their clients’ goals. In providing such services, a professional lawyer will comply with the law as well as with the rules and values of the legal profession. A professional lawyer will be trustworthy and honest, work cooperatively with opposing counsel, judges, colleagues, and clients, perform on schedule, keep promises, respond promptly to telephone calls, answer questions courteously, and charge a fair price. A professional lawyer will be accountable for the quality of his or her work.²²⁵

We are not born with values.²²⁶ Values are learned. They are derived from

and business practices, and
-demonstrate sensitivity and responsiveness to clients’ culture, age, gender, and disabilities.

²²¹ Allen K. Harris, *The Professionalism Crisis – The “Z” Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution*, 53 SC L. REV. 549 (2002).

²²² MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1999).

²²³ Adopted by the New Mexico Commission on Professionalism, November 28, 2000 (www.nmbar.org/statebar.professionalism.html).

²²⁴ Wash. State Ct. A.P.R. 11 Reg. 101(n).

²²⁵ For a more complete list of the attitudes and values necessary for competence, see Neil Gold, *Competence and Continuing Legal Education*, in *ESSAYS ON LEGAL EDUCATION* 23, 32-34 (Neil Gold ed., 1982).

²²⁶ Values are sometimes confused with basic human needs. Abraham Maslow developed a hierarchical theory of human motivation based on basic human needs in 1954. ABRAHAM MASLOW, *MOTIVATION AND PERSONALITY* (2d ed. 1970). Maslow described categories of basic human needs that influence human behavior in descending order of importance: 1. physiological

our life experiences and are transmitted in successive generations through society's institutions.²²⁷ Teaching values is considered to be an unavoidable part of all educators' functions.

Ethical teaching means teaching ethics. Beyond setting examples, teaching requires active efforts to teach about and instill good character. To be sure, in an age of relativism, when rival camps battle over the teaching of virtues and values, it is not easy to know how to teach ethics to students; and teachers are often confused and uncertain even about whether they should attempt to do so. But that decision is already made when they exemplify the worth and use of knowledge, service to others, or compassion. They must therefore be conscious of the moral qualities and dimensions of their work and not hesitate to teach about ethics and character.²²⁸

It is especially appropriate for law teachers to teach about professional values. One can assume that law students' knowledge and understanding of the values of the legal profession are undeveloped when they begin law school. Thus, the teaching of professional values is an appropriate and important topic for attention by law schools. "Law school is where most students first come into contact with issues relating to legal professionalism."²²⁹ The failure of law schools to give more attention to teaching students about professional values is increasingly criticized by scholars.²³⁰

[I]n most law schools, the apprenticeship of professionalism and purpose is subordinated to the cognitive, academic apprenticeship. In fact, in the minds of many faculty, ethical and social values are subjective and indeterminate and, for that reason, can potentially even conflict with the all-important values of the academy, values that underlie the cognitive apprenticeship: rigor, skepticism, intellectual distance, and objectivity.

However, if law schools would take the ethical-social apprenticeship seriously, they could have a significant and lasting impact on many aspects of their students' professionalism. This is not widely understood by faculty, who often argue that by the time students enter law school it is too late to affect their ethical commitment and professional responsibility.²³¹

Although some people believe that law school cannot affect

needs (sexual desire, sleep, activity and exercise, tastes, smells); 2. safety and security needs (security, stability, dependency, protection); 3. love and belonging needs; 4. esteem needs (self-respect; self-esteem; esteem of others); and 5. needs for self-actualization (inner motivation, to become what one is capable of becoming). *Id.* at 36.

²²⁷ "[C]ulture, society, and personality are the major antecedents of values . . ." MILTON ROKEACH, *THE NATURE OF HUMAN VALUES* 326 (1973). "Insights from various directions permit our pointing to a number of influences in shaping people's values – family, peers, school and college, religion and church, folk story, personal experience, and other." RICHARD W. KILBY, *THE STUDY OF HUMAN VALUES* 109 (1993).

²²⁸ BANNER & CANNON, *supra* note 80, at 40.

²²⁹ TEACHING AND LEARNING PROFESSIONALISM, *supra* note 134, at 13.

²³⁰ See, e.g., Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 22 PACE L. REV. 575 (2003).

²³¹ SULLIVAN ET AL., *supra* note 7, at 160.

students' values or ethical perspectives, in our view law school cannot help but affect them. For better or worse, the law school years constitute a powerful moral apprenticeship, whether or not this is intentional. Law schools play an important part in shaping their students' values, habits of mind, perceptions, and interpretations of their legal world; their understanding of their roles and responsibilities as lawyers; and the criteria by which they define and evaluate professional success.²³²

The objective of teaching professional values to law students is consistent with Jack Sammons' suggestion that, instead of focusing on competencies, that is, what a graduate should be able to do, "a law school should start thinking about its curriculum by seeking faculty agreement on what kind of lawyers it wants its students to be. I do not mean what they, the students, should be able to do, although that is part of it, but what they should be."²³³

Helping students understand and develop a commitment to professionalism can have important long term benefits for the students, the profession, and the public.

[W]e can make the practice of law more satisfying and more fun. Instead of worrying about our image, we should focus on two concepts – one, the full performance of our duty to practice our profession in the interest of the public, and two, the practice of our profession consistent with personal values and satisfaction. If we are faithful to these fundamentals, we will be better lawyers, citizens, and humans, and our standing will grow accordingly.²³⁴

The values of the legal profession can be described in various ways and reasonable people can disagree about how best to prioritize the list, but there is general, if not universal, agreement about many aspects of professional values. The MacCrate Report described four "fundamental values of the profession:" 1) provision of competent representation; 2) striving to promote justice, fairness, and morality; 3) contributing to the profession's fulfillment of its responsibility to enhance the capacity of law and legal institutions to do justice; and 4) professional self-development.²³⁵

The following components of professionalism also represent professional values:

Handle cases professionally:

- recognize the broader implications of your work,
- consider interests and values of clients and others,
- provide high quality services at fair cost,
- maintain independence of judgment,

²³² *Id.* at 169.

²³³ Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 GONZ. L. REV. 237, 245 (2002/03).

²³⁴ Former Attorney General Benjamin Civiletti as quoted in THE NATIONAL LAW JOURNAL, Feb. 7, 2000, at A16.

²³⁵ MACCRATE REPORT, *supra* note 31, at 140-41. Some critics have complained that the MacCrate Report did not give first priority to values over skills and that the Report inadequately describes and explains professional values. See, e.g., Pearce, *supra* note 230.

- embody honor, integrity, and fair play,
- be truthful and candid,
- exhibit diligence and punctuality,
- show courtesy and respect towards others, and
- comply with rules and expectations of the profession.

Manage law practice effectively and efficiently.

Engage in professional self-development.

Nurture quality of life.

Support aims of legal profession:

- provide access to justice,
- uphold the vitality and effectiveness of the legal system,
- promote justice, fairness, and morality,
- foster respect for the rule of law, and
- encourage diversity.²³⁶

The 2005 survey of the Arizona Bar conducted by Gerry Hess and Stephen Gerst²³⁷ also asked those lawyers and judges to assess the importance of various values to the success of an associate at the end of the first year of practice in a small, general practice firm. Sixteen values were considered “essential” or “very important” by over 70% of the respondents, and one more was rated that highly by over 50% of the respondents.

1. Act honestly and with integrity (99%).
2. Show reliability and willingness to accept responsibility (97%).
3. Strive to provide competent, high quality legal work for each client (97%).
4. Treat clients, lawyers, judges, and staff with respect (95%).
5. Show diligence and ethic of hard work (90%).
6. Demonstrate maturity, autonomy, and judgment (90%).
7. Demonstrate self-motivation and passion (88%).
8. Show self-confidence and earn others’ confidence (88%).
9. Commitment to continued professional growth and development (82%).
10. Demonstrate tolerance, patience, and empathy (82%).
11. Commitment to critical self-reflection (77%).
12. Commitment to personal growth and development (75%).
13. Engage in healthy stress management (75%).
14. Strive to promote justice, fairness, and morality (73%).
15. Demonstrate creativity and innovation (71%).
16. Commitment to a balanced life (70%).
17. Strive to rid the profession of bias (55%).

An earlier version of this document proposed that law schools should strive to help students develop the characteristics of “good lawyers.” We changed the

²³⁶ These components of professionalism were gleaned from numerous standards and codes of professionalism developed by state bars and other professional organizations, and they were used as the organizational framework for the professionalism website created and maintained by the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law, <http://professionalism.law.sc.edu>. The professionalism website was developed by the Center with a grant from the Open Society Institute. The site contains information about and links to materials, organizations, and initiatives related to professionalism in the legal profession.

²³⁷ Hess & Gerst, *supra* note 204.

language after receiving comments that this term may be politically incorrect. Bob MacCrate reminded us, however, that the moral concept of the good lawyer was promoted by Professor David Hoffman as early as 1836, and that Judge George Sharswood concluded his 1854 lecture on professional ethics with the admonition, “[l]et it be remembered and treasured in the heart of every [law] student, that no man [or woman] can ever be a truly great lawyer, who is not, in every sense of the word, a good man [or woman].”²³⁸

The remainder of this section discusses five professional values that we believe deserve special attention during law school: a commitment to justice; respect for the rule of law; honor, integrity, fair play, truthfulness and candor; sensitivity and effectiveness with diverse clients and colleagues; and nurturing quality of life.

a. A commitment to justice.²³⁹

Principle: Graduates strive to seek justice.

Comments:

All professional values deserve attention by law schools, but teaching students to strive to seek justice may be the most important goal of all. Andrew Boan concluded that “[t]he integration of skills and knowledge should assist practitioners in achieving the good of legal professions; achieving justice. The development of virtues consistent with this social good must be a central goal of legal education.”²⁴⁰ Richard Burke reached similar conclusions:

Truth, justice, and fairness, both in means and ends, are paramount on the scale of legal values, and when those are at stake, the other values must yield.²⁴¹

.

First, we should say that truth and justice are our goals; that, though we may never find totally objective truth or achieve perfect justice, we will seek and strive for them to the best of our professional ability. Second, we should make clear that this quest for truth and justice is a professional responsibility upon which rests the reliability and integrity of the entire legal system. Hence, an individual client’s desires and objectives must be subordinate to that quest. Third, our rules of conduct should specifically prohibit lawyer or lawyer participation in lying, falsification, misrepresentation, or deception in every aspect of practice from courtroom advocacy to office

²³⁸ MacCrate, *supra* note 21, at 824.

²³⁹ An annotated list of books and articles discussing the lawyer’s duty to promote justice, fairness, and morality is located on the Professionalism of Lawyers and Judges website, <http://professionalism.law.sc.edu>.

²⁴⁰ Andrew Boon, *History is Past Politics: A Critique of the Legal Skills Movement in England and Wales*, in TRANSFORMATIVE VISIONS OF LEGAL EDUCATION 151, 154-55 (Anthony Bradney & Fiona Cownie eds., 1998), *published simultaneously in* 25 J. LAW & SOC. 151 (1998) (citing Ronald Dearing, The National Committee of Inquiry into Higher Education, Report of the National Committee (1997)).

²⁴¹ Richard K. Burke, “Truth in Lawyering:” *An Essay on Lying and Deceit in the Practice of Law*, 38 ARK. L. REV. 1, 22 (1984).

consultation and practice.²⁴²

Calvin Woodward also concluded that teaching students to seek justice should be the central focus of legal education. Woodward considered the impact of the centuries-long process of secularization and concluded that this process had undermined the influence of religion and discredited legality as a social sanction, especially in western democratic societies. He also determined, however, that “the course of secularization has been led, almost without exception, by men seeking substantial justice. And therein lies the clue – a straw in the wind – for modern law schools. In a world populated by ultra-rational men, Law must find its strength in Justice, not Legality.”²⁴³ Woodward called on law schools to train students to regard themselves as agents of Justice as well as officers of the court.

Law schools must rid themselves of the vestiges of mysticism that, in days past, held laymen in awe of law and legality; and students must be trained to regard themselves as agents of Justice as well as officers of the court. More important, they must be shown precisely what this responsibility entails. And establishing a course of instruction that will serve this purpose should be the great issue with legal education today.²⁴⁴

Woodward proposed two governing maxims for law schools. “First, within the House of the Law there are many mansions – in which practitioners of all kinds, counsellors, judges, public servants, scholars and philosophers work in their several ways to further the course of, and to implement, Justice. Second, legal education, as an adjunct of Justice, must start with the proposition that the greater includes the lesser, the higher the lower, and not *vice versa*. That is, law schools must assume, as their basic premise, that the man who first understands his obligations to Justice will be better able to fulfill his legal ‘function,’ whatever it might be. Justice, in a word, must take precedence over law.”²⁴⁵

b. Respect for the rule of law.²⁴⁶

Principle: Graduates foster respect for the rule of law.

Comments:

It is impossible for a democracy to function unless most citizens generally abide by the laws of the society. Moral codes are one influence on individual behavior, but perhaps the most significant situational constraint on individual behavior is the legal system crafted by the society.

The society’s laws set forth rules of behavior that are enforced by the formal institutions of government. But in a democratic society, individual obedience to the law requires more than mere fear

²⁴² *Id.* at 3-4.

²⁴³ Calvin Woodward, *The Limits of Legal Realism: An Historical Perspective*, in PACKER & EHRLICH, *supra* note 106, at 329, 380.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 381.

²⁴⁶ A collection of books and articles discussing the lawyer’s duty to foster respect for the rule of law is located on the Professionalism of Lawyers and Judges website, <http://professionalism.law.sc.edu>.

of punishment for violations. For the law to serve as an effective constraint on behavior, the members of the society must respect the substance of the laws and the process by which they are created and enforced. This condition of respect will be referred to as the existence of the Rule of Law in a society.²⁴⁷

The rule of law not only constrains individual behavior, it also protects the human rights of individuals and prevents governments from acquiring unbridled power or acting arbitrarily.

[T]his concept has been built from various aspects of all legal systems. In France they will talk about l'état de droit, in Germany they will talk about rechts staat, in Italy they will talk about stati di diritto. But all these are variations of what we call the rule of law, and they are aimed at achieving the same objective – the establishment of individual freedoms and the protection against any manifestation of arbitrary power by the public authorities.

The experiences of many generations of jurists from highly diverse nationalities have enabled certain basic conditions and principles to be elaborated without which the rule of law cannot be sustained. These conditions and principles are: the separation of powers, judges' independence, respect for individual fundamental rights and freedoms, the legality of administrative action, control of legislation and administration by independent judges, and, most importantly, the need for a bar which maintains its independence from the authorities and which is devoted to defending the notion of the rule of law.

This notion is, therefore, intended to submit the administration to respect of the law. Legislation passed by the parliament, which represents the electorate, is the instrument through which the people's sovereignty is imposed on the administration, preventing the administration from becoming an autocracy.²⁴⁸

The importance of the rule of law in maintaining order in a society cannot be overstated. The Preamble of the Universal Declaration of Human Rights states that “[h]uman rights have to be protected by the rule of law, and where the rule of law is not observed, finally people may resort to rebellion against tyranny and oppression.”²⁴⁹

²⁴⁷ Richard Lavoie, *Subverting the Rule of Law: The Judiciary's Role in Fostering Unethical Behavior*, 75 U. COLO. L. REV. 115, 138 (2004) (citing Margaret J. Radin, *Reconsidering the Rule of Law*, 69 B. U. L. REV. 781, 790 (1989) who explained that the Rule of Law is grounded not on the bare claim of efficacy of behavioral control, but on the specific political vision of traditional liberalism. Liberty is the core value; over-reaching by Leviathan is the danger on one hand, and disintegration of social cooperation because of the prisoner's dilemma is the danger on the other).

²⁴⁸ Adama Dieng, *Role of Judges and Lawyers in Defending the Rule of Law*, 21 FORDHAM INT'L L. J. 550, 550-51 (1997).

²⁴⁹ Preamble, Universal Declaration of Human Rights, G.A. Res. 217A, at 1, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

Lawyers play a central role in maintaining the rule of law in every democracy. As gate keepers to the judicial system which upholds and enforces the rule of law, lawyers have a special obligation to respect and foster respect for the rule of law, irrespective of their personal opinions about particular aspects of the law. The basic integrity of our system of law is the “long range good” that justifies the activities of lawyers generally.²⁵⁰ “[I]f an independent judiciary is the backbone of the rule of law, as it has been often described, then an independent legal profession is the catalyst that helps achieve it.”²⁵¹

Moreover, our respect for the rule of law in society should be an active one.

Part of our responsibility as legal professionals must be to work to maintain the law’s ability to structure relationships appropriately and efficiently, and to resolve disputes fairly and as harmoniously as circumstances and litigants will allow. We must recognize that the social usefulness of the law, and in turn the esteem in which lawyers are held, depends ultimately on the respect the law receives from non-lawyers. But that objective can only be achieved if we lead by example. Only if lawyers take seriously their special responsibility to hold the law in respect themselves will others understand fully its importance to our culture. And only with that understanding will others accept that the professional independence of lawyers is necessary to the adequate functioning of the legal system.²⁵²

Law schools should ensure that their students understand the importance of the rule of law and their roles in maintaining it, and they should infuse students with a commitment to foster respect for the rule of law.

c. Honor, integrity, fair play, truthfulness, and candor.²⁵³

Principle: Graduates embody honor, integrity, and fair play and are truthful and candid.

Comments:

It is important for lawyers to embody honor, integrity, and fair play and to be truthful and candid. It may be especially important for lawyers to embody integrity. “Integrity is clearly a foundation of professionalism, but its effect on personal well-being is perhaps even more direct. In fact, integrity is conceptually synonymous with health . . . a person’s level of personal integrity affects his physical health and well-being directly.”²⁵⁴ Law students who understand the relationship between professionalism and their own health and well-being are more likely to be committed

²⁵⁰ Timothy P. Terrell & James H. Wildman, *Rethinking “Professionalism,”* 41 EMORY L. J. 403, 426 (1992).

²⁵¹ Dieng, *supra* note 248, at 550 (crediting Fali Nariman for making the statement).

²⁵² Terrell & Wildman, *supra* note 250, at 426-27.

²⁵³ Annotated lists of books and articles discussing the lawyer’s duty to embody honor, integrity, and fair play and to be truthful and candid is located on the Professionalism of Lawyers and Judges website, <http://professionalism.law.sc.edu>.

²⁵⁴ Krieger, *Professionalism and Personal Satisfaction*, *supra* note 76, at 431.

to professionalism.

We may certainly discourage lying, deception, manipulation of fact or law, or abuse of people or process because such behavior is “unprofessional.” But the impact will be multiplied if we also explain that such behavior erodes integrity by separating the lawyer from key parts of her self – her conscience, sense of decency, and/or intrinsic values. The results are likely to include loss of her professional reputation along with the physical and emotional stress that will undermine her health.²⁵⁵

It is well-documented that the decline in public respect for lawyers is in significant measure attributable to the public’s sense that lawyers are not trustworthy.²⁵⁶ While the public’s perception of lawyers may not be entirely accurate, there are surely some reasons for the public to doubt the integrity and truthfulness of lawyers. “The disheartening reality is that among lawyers – who once claimed honesty and integrity as their stock-in-trade, and who once proudly asserted that their word was their bond – too many are *rightly* seen as untrustworthy.”²⁵⁷

The Professional Reform Initiative (PRI), an Open Society-funded project of the National Conference of Bar Presidents, is seeking to increase public trust and confidence in the justice system. The PRI is identifying those aspects of lawyer conduct that affect public trust and confidence and formulating reforms and solutions for improving respect for the legal profession. As its first project, the PRI is emphasizing truthfulness, honesty, and integrity as fundamental core values of the legal profession. The PRI initiative is based on the view that lack of truthfulness by lawyers is a problem that requires the systematic and long-term attention of the organized bar. The PRI is reaching out to the judiciary, law schools, and bar admissions authorities to help implement curative plans of action.²⁵⁸

d. Sensitivity and effectiveness with diverse clients and colleagues.

Principle: Graduates deal sensitively and effectively with diverse clients and colleagues.

Comments:

It is important for law schools to help students develop their capacity to deal sensitively and effectively with clients and colleagues from a range of social, economic, and ethnic backgrounds. Students should learn to identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client’s objectives. Cross-cultural competence is a skill that can be taught.²⁵⁹

²⁵⁵ *Id.* at 431-32.

²⁵⁶ Hodes, *supra* note 65, at 528.

²⁵⁷ *Id.* at 533.

²⁵⁸ The information about the PRI was taken from a collection of materials captioned “The Professional Reform Initiative: A Project of the National Conference of Bar Presidents,” that was distributed during the 2004 ABA Annual Meeting. Additional details about the PRI and its integrity initiative are provided in Hodes, *supra* note 68. More current information about the PRI can be obtained from W. Seaborn Jones, Esq., tel. 404/688-2600, email jones@og-law.com.

²⁵⁹ Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8

One way in which law schools can enhance their students' abilities to deal sensitively and effectively with diverse groups of clients and colleagues is by serving as a model for promoting diversity in law practice and the community, including having in the law school community a critical mass of students, faculty, and staff from minority groups that have traditionally been the victims of discrimination. As students progress through law school, they identify and analyze their conscious and subconscious biases regarding race, culture, social status, wealth, and poverty through discourse with their teachers and fellow students. They test their own perceptions against those of their peers and teachers. If the law school community is racially, culturally, and socio-economically diverse, students develop better understandings of the ways in which race and culture can affect clients' and lawyers' world views and influence their objectives and decisions.²⁶⁰

Students can improve their cross-cultural skills by practicing and honing throughout their professional careers the five habits of cross-cultural lawyering developed by Susan Bryant and Jean Koh Peters.²⁶¹

Habit One: Degrees of Separation and Connection. Ask students to list and diagram similarities and differences between themselves and their clients and then explore the significance of these similarities and differences.

Habit Two: The Three Rings. Ask students to identify and analyze the possible effects of similarities and differences on the interaction between the client, the legal decision-maker, and the lawyer – the three rings.

Habit Three: Parallel Universes. Teach students to explore alternative explanations for clients' behaviors that might be based in cultural differences.

Habit Four: Pitfalls, Red Flags and Remedies. Teach students to identify before and during communications with clients potential cross-cultural pitfalls that may impede communication, understanding, and rapport.

Habit Five: The Camel's Back. Encourage students to explore themselves as cultural beings who have and are influenced by biases and stereotypes, to create settings in which bias and stereotype are less likely to govern, and to seek to eliminate bias.

CLINICAL L. REV. 33 (2001), citing R.W. Terry, *Authenticity: Unity Without Uniformity*, in THE PROMISE OF DIVERSITY: OVER 40 VOICES DISCUSS THE STRATEGIES FOR ELIMINATING DISCRIMINATION IN ORGANIZATIONS 113-14 (E. Y. Cross, J. H. Katz, F. A. Miller & E. W. Seashore, eds., 1994).

²⁶⁰ See Suellen Scarnecchia, *Gender & Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J. L. REFORM 319, 331 (1990) (setting out student reactions to discussions of race or gender issues in law school classes); Mary Jo Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach*, 38 J. LEGAL EDUC. 183 (1988) (discussing confronting racism and sexism through clinical education).

²⁶¹ Bryant, *supra* note 259, at 64-78.

e. **Nurturing quality of life.**²⁶²

Principle: Graduates nurture quality of life.

Comments:

As a group, lawyers do not do very well at nurturing the quality of their lives. Lawyers suffer higher rates of depression, anxiety, and other mental illness, suicide, divorce, alcoholism and drug abuse, and poor physical health than the general population or other occupations.²⁶³

These problems often begin in law school. As discussed in Chapter One, law school has negative effects on many students' health.²⁶⁴ Although law students enter law school healthier and happier than other students, they leave law school in much worse shape.

The findings that students became depressed and unhappy in the first year and remained so throughout law school are consistent with previous studies. Our further investigation of values and motivation was the first such study of which I am aware. All of the data provides empirical support for the concern that our legal training has precisely the opposite impact on students from that suggested by our rhetoric – it appears to undermine the values and motivation that promote professionalism as it markedly diminishes life satisfaction. All indications are that when students graduate and enter the profession, they are significantly different people from those who arrived to begin law school: they are more depressed, less service-oriented, and more inclined toward undesirable, superficial goals and values.²⁶⁵

Law school communities would be healthier, happier places if we help each other understand the nature of the problems that legal education and law practice can cause and jointly search for solutions for preventing damage to our students' sense of self-worth, security, authenticity, and competence.

Law schools can help students understand that “well-being results from experiences of *self-esteem, relatedness to others, autonomy, authenticity, and competence*. Fulfillment of any of these needs provides a sense of well-being and thriving, while lack of such experiences produces distress, depressed mood or loss of vitality. Self-esteem and relatedness shows the very strongest correlation to happiness.”²⁶⁶ The message law schools should send to our students is, “[i]f you

²⁶² An annotated list of books and articles discussing the importance of lawyers nurturing quality of life is located on the Professionalism of Lawyers and Judges website, <http://professionalism.law.sc.edu>.

²⁶³ See, e.g., Schiltz, *supra* note 76.

²⁶⁴ The following list includes some of the more well-known articles about the negative impacts of legal education. They include cites to many studies, some of which are ongoing. Krieger, *Professionalism and Personal Satisfaction*, *supra* note 76; Krieger, Institutional Denial, *supra* note 76; Gulati et al., *supra* note 3; Schiltz, *supra* note 76; Krieger, *What We're Not Telling*, *supra* note 76; *Making Docile Lawyers*, *supra* note 76; GRANFIELD, *supra* note 76; Glesner, *supra* note 76.

²⁶⁵ Krieger, *Professionalism and Personal Satisfaction*, *supra* note 76, at 433-34 (citations omitted).

²⁶⁶ *Id.* at 430.

focus your life on growth of self, relationships, and community, your life will feel meaningful and satisfying. You will avoid the frustration, confusion, isolation, depression and addictions common to so many in our profession.”²⁶⁷

Unfortunately, as discussed earlier, the attitudes, paradigms, and teaching methods at most law schools are sending the opposite message. Consequently, law students are suffering unnecessary harm during law school which negatively impacts their professionalism as well as their health and happiness. If we do not teach and enable students to nurture the quality of their lives during law school, it is unlikely they will do so when confronted with the demands and pressures of law practice.

²⁶⁷ *Id.* at 437-38.

