

# LEGAL EDUCATION AND THE PROFESSION

## The Role of Law Schools in Preparing Lawyers for the Practice of Law

*Study conducted by BRYANT GARTH, Director, American Bar Foundation; JOANNE MARTIN, Assistant Director, American Bar Foundation; and DONALD D. LANDON, Professor and Head, Department of Sociology and Anthropology, Southwest Missouri State University.*

### Learning Lawyering: Where Do Lawyers Acquire Practice Skills?

Teachers of law and practicing lawyers often seem to inhabit different worlds. To many observers, law schools, steeped in the traditions of academia and legal scholarship, appear far removed from the realities of law practice. A study is currently underway at the ABF that identifies the knowledge and skills which lawyers now consider important to the practice of law; where they acquired the skills; and their view of the role that law school did, or should, play in transmitting knowledge, skills, and values. While data analysis is still in progress, some interesting preliminary findings have emerged from this research.

The study is being conducted by ABF Director and Research Fellow Bryant Garth, ABF Assistant Director Joanne Martin, and Professor Donald Landon of Southwest Missouri State University. Three surveys, designed to tap the perceptions of both urban and rural lawyers, were fielded. Those surveyed include:

- ◆ Partners in Chicago law firms who have responsibility for hiring new lawyers;
- ◆ Lawyers currently practicing in the Chicago area who have been admitted to the practice of law since 1986;

- ◆ Lawyers practicing in rural and mid-sized towns in the state of Missouri who have been practicing for ten or fewer years.

### The Urban Bar

The survey of hiring partners, conducted by telephone, was directed to a representative sample of all firms in Chicago that have at least five partners. Over 100 hiring partners were interviewed to elicit their views on the importance of various skills during the hiring process.

At the resume review stage, law school, class rank, and participation in law review were identified by two-thirds of the hiring partners as the most important considerations. At the interview stage, the criteria change. Here, over 70 percent of the partners considered oral communication skills, general appearance and demeanor, and class rank to be most important. These three factors, joined by law school, remained of prime importance at the point at which the ultimate hiring decision is made.

Hiring partners indicated that they expect new associates to bring with them oral and written communications skills, ability in legal analysis and reasoning, computer and library research skills, and sensitivity to ethical concerns. Among the skills which hiring partners believe will be developed on the job are drafting skills, negotiation and counseling, and the ability to obtain and keep clients. The hiring partners surveyed have not seen much change recently in the level of skills brought by new

associates, with a couple of exceptions. They do see a decrease in written communication skills and an increase in both computer research skills and sensitivity to ethical concerns.

The mail survey of recent law school graduates was sent to about 1,500 lawyers, a random sample of those admitted to the bar since 1986 in the Chicago area. One of the striking characteristics of this group is a disproportionate representation of large law firm lawyers. The respondent pool is not a picture of the bar in Chicago, but rather a very accurate picture of the career distributions of individuals recently admitted to the practice of law in the Chicago area.

The new lawyers were asked to indicate the importance to them of each item in a list of 17 skills and where they acquired the skills:

- ◆ Oral and written communication skills and the ability to instill others' confidence were considered most important; knowledge of substantive and procedural law fell in the middle; research skills, litigation skills and ability to obtain and keep clients were considered least important. (The latter being an effect, perhaps, of delayed client responsibilities in large firms.)
- ◆ The all-important communication skills were acquired, the new lawyers state, from their own experience, not from the law school or firm. Law schools are viewed as responsible for developing knowledge of substantive

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and procedural law, ability in legal analysis and legal reasoning, research skills, and sensitivity to ethical concerns.

One major thrust of the study is an attempt to identify teaching gaps in law school training, that is, those areas which law school graduates think can be taught in law school but which, in their view, did not receive sufficient attention in the law school setting. The data, indeed, do disclose some significant gaps. Among them:

- ◆ Over three-fourths of those surveyed think oral communication skills can be taught; only 39 percent felt such skills received sufficient attention.
- ◆ Written communication skills can be taught in the view of 91 percent of the respondents, yet only 55 percent say they received sufficient attention. Seventy-eight percent of the respondents feel that legal drafting skills can be taught, but only 23 percent perceive that sufficient attention was given to development of these skills.

#### Gaps: Then and Now

With Chicago as the site of data gathering for the urban component of the study, the research team is able to use the Zemans and Rosenblum data, also collected in Chicago in the '70s, as a baseline to measure change. At first glance, it does not appear that many gaps have been closed since the late 1970s. Despite all the recent attention

to clinical education, gaps still exist, for example, in the areas of negotiation and counseling. But there have been changes that provide some grounds for optimism:

- ◆ While there is still a gap, many more lawyers now think that negotiation can be taught effectively (up from 35 percent to 67 percent) and that it received sufficient attention in law school (up from 15 percent to 28 percent).
- ◆ A very dramatic change has occurred in the area of professional responsibility. In the Zemans and Rosenblum study the basic attitude was that ethical concerns can't be taught, are not all that important, and are something that evolve in practice. In a sharp reversal, 86 percent of the current respondents say sensitivity to ethical concerns can be taught effectively and 68 percent say sufficient attention was paid to this area. Professional responsibility has arrived as a substantive concern in the law schools.

The data also indicate that some skills have declined in relative importance in the past decade: notably, fact gathering and legal research. This decline may stem from a general shift in emphasis from adversarial fact-intensive litigation to negotiated settlements. Another change in the last decade is the elevation of general business skills. This is reflected in the decided in-

crease in importance assigned by new graduates and hiring partners to oral communication skills and ability to instill others' confidence.

#### The Rural Bar

In contrast to the large-firm Chicago bar, the rural lawyers surveyed by Professor Donald Landon reside at the opposite end of the legal practice spectrum. These lawyers are working in towns of 20,000 or less with some as small as 250 residents. Nationally, lawyers working in non-metropolitan areas represent about 13 percent of the Bar. But the small percentage is deceptive in that:

- ◆ There are about as many lawyers practicing in rural settings as there are lawyers practicing in firms with 50 or more lawyers.
- ◆ The rural bar is far more representative of all practicing lawyers. Nearly two out of three lawyers are doing exactly what rural lawyers do — practicing solo or in firms of under five lawyers or less and representing primarily individual and small business clients.

The entrepreneurial nature of rural law practice and its emphasis on personal plight legal matters shape evaluations of lawyering skills. Rural lawyers gave much higher importance scores than did their urban counterparts to oral and written communication skills, ability to instill others' confidence, and sensitivity to professional ethical concerns, litigation skills, and ability to get and keep clients.

Overall, the rural lawyers gave law schools more credit for providing skills than did their city colleagues. However, they did express disappointment in four areas: being able to instill others' confidence; skills in organizing and managing legal work; counseling skills; and skills in obtaining and keeping clients.

The rural and metropolitan lawyers agreed generally on which skill areas were given sufficient attention in law school. But the rural bar indicated it had learned more of the important skills through law school than did the metropolitan bar.

Rural lawyers cite their own repeated experience as the most important source of lawyering skills, with law school coming in second. The major contribution of law school, for these lawyers, was training in substantive law.

Analysis of these data sets is continuing as the researchers seek to further contrast and compare the rural and urban bar and to delineate changes over time in the law school experience.

*This summary was prepared at the request of the Virginia State Bar by Joanne Martin, Assistant Director, American Bar Foundation.*

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