Preparation for Practice, Preparation for the Law

By Stephen J. Safranek

Law school faculty and practicing lawyers often disagree about the way law schools prepare students for the practice of law. Both groups also criticize the role of the bar examination in this process.[1] The relationship between law school faculty, practicing lawyers, and the bar examination reveals some of the problems in the profession. Ultimately, though, it reveals the complexity in our legal system—a complexity that is not easily eliminated.

The ABA prohibits law schools from teaching bar examination courses for credit.[2] However, it requires law schools to "maintain an educational program that prepares its graduates for admission to the bar and to participate effectively and responsibly in the legal profession."[3] Most law schools focus on preparing graduates "to participate effectively and responsibly in the legal profession" rather than the "admission to the bar" requirement.

Because the bar examination is seen as a one-time hurdle to be cleared and because it is not seen as a test of professional ability, law school faculty and law firms place little emphasis on the bar—passage alone is demanded. Some faculty do emphasize tested questions when teaching a particular area of law. Others ignore specific questions and emphasize the principles or conflicting principles that apply in multiple jurisdictions. Consequently, law school students universally take a bar preparation course and spend substantial time preparing for the bar examination despite the law school they attended or their academic rank.

Moreover, the knowledge acquired during the bar preparation is not seen as critical information for actual practice but only to acquire the license to practice. Thus, one of the first issues the legal profession needs to address is how the bar examination itself can be a true test of information necessary for good practice. If it were a true test of good practice, the profession would have a useful tool for monitoring bar admission. Practitioners also could use a bar test score, like law schools use LSAT scores and grades, as criteria for selection. Of course, if the examination were perceived as a good indicator of competency to practice, regular testing of practitioners might be a next logical step. This is a step few members of the bar would support.

Because the bar examination is not a useful tool for testing law school graduates' ability to practice, law firm hiring committees must rely on other indicators of professional competency. Increasingly, law practitioners complain about recent law school graduates' preparation for practice. Many practitioners think that more emphasis should be placed on requiring students to take clinical courses to obtain necessary skills. Yet, the most highly rated law schools in America have few required courses and fewer clinical demands.[4]

Some law schools are offering more clinical courses than they were ten years ago. In addition, a trend in law schools toward integrating legal writing with research and practice is evident. Besides trying to integrate practical skills in the ordinary classroom, schools try to integrate learning with practice in clinics. The problem with such integration lies in the type of legal clinics that exist and the type of practice most lawyers have. Law schools, especially those in urban areas, generally have some form of clinic that serves the poor or needy by providing students with experience in landlord/tenant issues, immigration, consumer protection, family law, and welfare assistance. However, the vast majority of students will not practice in these areas. And despite their complaints about professional competency, few employers actually use participation in such clinics as a factor in hiring. Schools do not have the resources to offer a range of clinics to simulate the varied experiences of practice.

The criticisms that the practicing bar has leveled at the academy may not be capable of resolution. Certainly, the growth in clinics and the number of integrating courses have bridged some divides. However, no evidence shows that these changes have satisfied the practicing bar.

The body of substantive and procedural law itself may prevent full satisfaction. Lawyers today practice in areas previously unimaginable, such as family law[5] and the body of law dealing with the digital revolution. Electronic commerce has grown so fast that Governor Engler seeks to create a special court in Michigan to handle disputes in that field. The Michigan Supreme Court recognized the growth in the law by adding four subjects in 1998: domestic relations, conflict of laws, "no-fault," and worker's compensation. Consequently, law schools have increased their curricular offerings and have generally limited or lowered the number of required courses in their curriculums.

Therefore, the divide between the practicing bar, the legal academy, and the bar examination cannot easily be resolved. Until and unless the legislators stop creating new laws and even dispense with some of the laws in existence, the range of information

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students must know to practice law will continue to grow. Law schools and practitioners could bridge their divide with specialized law schools or law tracks. With tracking, specialized clinics could provide in-depth practice in fields currently unserved. The perfect analogue for such preparation is in the medical field. Medical students receive two years of intellectual training, two years of clinical training, and then further specialization depending on interest and difficulty of mastering the specialty.

Law practitioners cannot expect law schools to teach students the substance of the law in three years and to make them fully practice-ready in every area of law. Some firms, knowing that the more refined the practice, the greater the need for specialized training, have developed extensive training programs.

Law faculty and practitioners know that the sheer quantity of laws and regulations require at least three years of intellectual training. Practitioners also think that law students do not have enough practical experiences in law school. When they recognize how vast and varied the legal landscape is, they can call for reform and simplification of the laws or they can call for specialized credentialing for lawyers.

However, the academy simply cannot train lawyers with practical experience in fields as diverse as environmental law, bankruptcy, contracts, constitutional law, family law, and criminal law. No school does or can provide such training. In fact, only the largest law firms in America could claim to provide expert training in these fields. Until reform or credentialing occurs, law schools must attempt to provide students with an intellectual understanding of fundamental areas of the law and sufficient training to understand how various legal settings function. For now, further training is dependent upon a partnering between schools and the trained practitioners of the diverse fields of the law. ✦

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FOOTNOTES

1. The most obvious example of this dispute is found in the *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* produced by the ABA in 1992. This report is popularly called the "MacCrate Report."
2. ABA Standard 302(f).
3. ABA Standard 301(a). Interpretation 301-1 notes that "bar passage" is a factor to be considered in determining whether or not a law school complies with this Standard.
4. *MacCrate Report,* Recommendations.
5. The field of domestic relations arose about 40 years ago, but today family law deals with areas such as divorce, in-vitro technologies, new "families," and other areas partially dependent on new technology.