

Practitioners and Law School Faculty: Who's the Real Lawyer?

We perceive law professors as being isolated in a theoretical environment and rarely interacting with the practicing bar, especially in State Bar of Michigan activities. This column discusses this view and suggests how both the academy and the State Bar might facilitate more law school faculty involvement in bar activities.¹

Many lawyers from the state's law schools do participate in committees, sections, and the Publications and Website Advisory Committee, formerly the Bar Journal Advisory Board. The State Bar leadership also has consistently credited the pivotal role legal education plays in improving professional skills and values. Michigan's law school deans connect with State Bar officers through regular meetings of the Law School Deans Committee. During the Legal Education Committee's presentations this spring at Thomas M. Cooley Law School and Michigan State University Detroit College of Law, faculty enthusiastically offered suggestions for this column's topics and framed issues the committee should consider.

However, the overriding questions are why academic membership in the State Bar is not greater, and why those who are members do not participate more actively. From there, we consider whether the requirements for membership may impede law faculty membership and whether the justifiably warranted emphasis of the State Bar of Michigan on the practice of law unintentionally discourages law school faculty inclusion. We also need to think about why the onus is upon educators to mingle in the world of practice, and not upon practitioners to become more engaged in legal education. Finally, we must acknowledge the value of the integration of these two groups of lawyers.

Although the disconnect between law professors and practitioners may originate from the movement of legal training from law office apprenticeships to law schools and has continued for too many additional reasons to be addressed here, the current rules of admission to the bar and bar membership in most states perpetuate the disjuncture. To become a member of the State Bar of Michigan, a lawyer must be licensed to practice by passing the bar exam or through reciprocal admission. Therefore, a professor must pass the bar in some state and meet all the accompanying expenses. After all, practitioners meet these requirements. Shouldn't the same be demanded of lawyers in the academy?

In reality, the membership requirement is more complex. A law school graduate need not take a bar exam to join a law faculty. Their time and money might be spent more wisely developing their résumés—judicial clerkships, advanced degrees, and published scholarly articles.

Law professors often move from teaching in one state to a school in another, the common transience of those in higher education. Although many have passed a state bar exam, applications for reciprocity after relocations are time-consuming and costly. Maintaining active membership in some states also requires meeting expensive mandatory CLE requirements. Although among the highest paid professors in higher education, law professors do not possess the income earning potential of practicing lawyers.

Obviously, bar membership for neither law faculty nor practitioners equates to active participation in State Bar activities. However,

simplifying the process and reducing the costs of reciprocity or allowing a discounted membership rate or school group rate might bring more law faculty expertise and dues revenue to the State Bar of Michigan, making it in the bar's best interest to facilitate a change.

Is there a benefit to joining a state bar even if the professor's position does not require it? Although it may not be a mandate prompting more bar membership and involvement from law school faculty, the ABA Standards for Approval of Law Schools list one of the responsibilities of full-time faculty as work "with the practicing bar and judiciary to improve the profession" [Standard 404(a)(4)] and cite opportunities for "service to the legal profession" [Standard 402(a)(3)] as one of the factors in determining the number of full-time faculty. Participation in bar activities arguably is one way to meet these standards. Law schools that offer incentives for active bar membership and value participation in bar activities in tenure and other employment considerations equally with published scholarship encourage a more diverse state bar.

Nonmembers can participate on State Bar of Michigan committees. Previously, the bylaws provided for associate memberships on committees, the total number not to exceed one-third of the total authorized membership. Under this provision, Article VI, 2c, non-State Bar members of law school faculty could contribute their expertise to standing and special committees. Recent amendments to the bylaws eliminated the reference to associate memberships and ratio restrictions. Although membership on committees derives from those of the active membership appointed by the State Bar president, according to explanatory wording attached to the amendments, the Board of Commissioners can create associate member positions to

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committees by yearly resolution. Membership in the sections remains limited to active State Bar members according to the bylaws.

Eliminating the wording about two forms of committee membership recognizes the worth of a significant group of lawyers, in both the academy and elsewhere, who are not State Bar members, theoretically expanding nonmember allotment. In practice, the initial allocation of associate members by this summer's Board of Commissioners' resolution reduces the previous ratio for several committees and provides none for others. Furthermore, each committee assumes the additional task of requesting associate membership increases by Board of Commissioner resolution. Current criticism of the profession from within and without compels support of the practitioner and the re-examination of standards of competency, ethics, and professional life, but without inadvertently becoming separatists.

Practitioners can meet educators halfway in bridging the gap by journeying to the academy—participating in Moot Court competitions and other reality-based programs, teaching as adjuncts, or taking advantage of opportunities to learn about current trends and issues in legal education. They will discover much change since their student days—technological developments, commitment to expanding areas of demand for legal expertise, and immersion in the dynamics of current legal education issues.

With this understanding, practitioners are better positioned to offer their own insight on what lawyers need to know to practice law effectively and competently and how to teach it. This also means recognizing the greatness of a law degree is its multiple applications. Those with law degrees who do not engage in the rigorous practice of law are no less lawyers than those who do.

Yet this discussion becomes simply a journalistic exercise of professional esteem raising puff unless we attribute to it some value to the profession and those we serve. The short list of paybacks from the united expertise of those skilled in practice and those skilled in theory includes the best imaginable combination for drafting and reviewing proposed changes in court rules, procedure, and the rules of evidence and for advocating for

or against pending legislation and proposed law reform.

The interaction of the professor and the practitioner also creates the strongest atmosphere toward ensuring that law students are prepared to represent their clients competently or become professors with a broad knowledge of both the theory and realities of the profession. This translates into stronger professional standing publicly. Furthermore, law professors become more familiar with what practitioners need to know through contact with the practicing bar and judiciary. Law professors do more than concoct new theoretical abstractions; they are well versed in the current state of the law and can transfer that asset to practitioners.

This column touches upon only a few of the multiple factors preventing the full utilization of all lawyers' professional proficiency. Let's continue this conversation in letters to

the *Bar Journal* and in the Town Hall Forum at <http://www.michbar.org>. ♦

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FOOTNOTE

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