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TRANSITION EDUCATION: ONE STEP IN A LIFETIME OF LEARNING FOR LAWYERS

Janis E. Clark*

In times of change
learners shall
inherit the earth while the
learned are beautifully
equipped for a world
that no longer exists.¹

While the law has a long and distinguished past as a “learned” profession, only in the past decades has it become clear that the law must also be a “learning” profession. As noted in the quote by Eric Hoffer, being “learned” no longer properly equips us for our rapidly changing world. Likewise, lawyers cannot simply earn their law degree, get a license to practice, and then stop learning. Nothing short of a commitment to a lifetime of learning will turn a great law student into a competent lawyer.

The first step taken to recognize the need for post-admission professional education was the development of continuing legal education nationally and at the state and local levels. Then came the observation by the profession that between the formal education of law school and the practice of law, there existed significant gaps in understanding by new lawyers about how law is actually practiced. This recognition has led to the efforts by many in the profession to “bridge-the-gap,” or at least to narrow it somewhat, between law school and law practice. It is this narrow slice of time on the “educational continuum”² that this Article focuses upon.

As we have all heard numerous times, “law school teaches students to think like lawyers.” Very few will claim that a traditional law school education will prepare a student to hit the ground running as a lawyer the day the certificate of admission is bestowed. Yet, that is quite often

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¹ ERIC HOFFER, *THE ORDEAL OF CHANGE* (Harper Collins 1973).

² This term was utilized for analytical purposes in *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992) [hereinafter *MACCRATE REPORT*]. This term reflects the belief that for lawyers, learning is a life-long commitment, a continuum starting with undergraduate pre-law courses and continuing through law school, bar admission, bridge-the-gap programs, and throughout the years of practice. *Id.*

the expectation, unreasonable as it may be. A new lawyer is permitted by license to undertake the legal equivalent to brain surgery, often with no additional training. The medical profession does not work that way, but the American legal profession does. A new lawyer's charge is to produce high quality legal work and to provide client service. The capability to produce excellent legal work may be the product of law school, but the ability to deliver quality client service is learned outside the structure of case studies.³ "Critics lament the inadequacies of law school education in preparing aspiring lawyers for practice Even those who dispute the scope of this 'competence crisis' . . . recognize there is a significant level of incompetent performance."⁴

If there is a gap between law student and lawyer, what is required to bridge that gap in terms of professional training? Where does the training responsibility rest? When should the training occur? These issues have been analyzed by the best and brightest in the profession and continue to be the subject of professional discussion and debate. This Article provides an overview of that analysis and some of the programs developed to address the perceived transition gap. It also includes the efforts of the Kentucky Bar Association to address these issues.

While the legal profession has set forth many ideas and "conclusions" and the number of programs aimed at "bridging-the-gap" continues to increase, it is safe to say this is an area of legal education that still deserves much attention and work. It is certainly still the topic of much debate between those in various legal education communities.

The starting point for this analysis of transition education is an overview of the ABA's landmark work, *Legal Education and Professional Development—An Educational Continuum* ("MacCrate Report").⁵ While identifying many needs and many opportunities in the area of transition education, the MacCrate Report actually finds that "there is no 'gap.' There is only an arduous road of professional development along which all prospective lawyers should travel."⁶ While that may be the conclusion noted in the final report, significant discussion of the "gap" still exists in the report, as well as throughout the legal profession. To

³ SUZANNE O'NEILL & CATHERINE GERHAUSER SPARKMAN, FROM LAW SCHOOL TO LAW PRACTICE: THE NEW ASSOCIATE'S GUIDE (ALI-ABA 1989).

⁴ James Clark & Edward Monohan, *First Year Transition from the Law School to the Court Room: A Paradigm of Value and Ethical Conflicts Faced by New Professionals and Their Educators*, in KENTUCKY BAR ASSOCIATION LEGAL EDUCATION CONCLAVE 247, 250 (1995) (on file with author).

⁵ See MACCRATE REPORT, *supra* note 2.

⁶ See *id.* at 8.

say that conclusions differ on this matter is obvious so there will continue to be references to the “gap” contained in this Article.

The MacCrate Report identifies a list of fundamental lawyering skills and professional values with the “limited goal of ensuring practice at a minimum level of competency.”⁷ Understanding and addressing what those skills and values are is important in determining what, if anything, is missing among new lawyers and what can be done to bridge or narrow the “gap,” if it exists.

I. BASIC LAWYERING SKILLS NEEDED BY NEW LAWYERS

Considerable research was undertaken by the MacCrate Task Force through a survey of law firms and other means to identify the skills considered basic to providing legal work and client service.⁸ The list was honed to ten areas of fundamental lawyering skills, which are summarized briefly below. If new lawyers are considered to have an inadequate grasp on these skills, there may be a “gap” which can be narrowed somewhat by well designed transition education programs.

A. *Problem Solving*

Several of the models that have been developed for teaching or evaluating a lawyer’s competency recognize the importance of the conceptual skills involved in problem solving. In order to develop and evaluate strategies for solving a problem or accomplishing an objective presented by a client or other entity that has employed the lawyer’s services, a lawyer should be familiar with the skills and concepts involved in problem solving. Included are identifying and diagnosing the problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan, and keeping the planning process open to new information and new ideas.⁹

B. *Legal Analysis and Reasoning*

The importance of legal analysis and reasoning is universally acknowledged. In order to effectively analyze the application of legal rules and principles to a client’s problem, a lawyer should be familiar with the skills and concepts involved in identifying legal issues,

⁷ See *id.* at 132.

⁸ See *id.* at 126.

⁹ See *id.* at 141-51.

formulating legal theories, elaborating and enhancing the theories, and evaluating and criticizing the theories.¹⁰

C. *Legal Research*

It can hardly be doubted that the ability to do legal research is one of the skills that any competent lawyer must possess. In order to conduct legal research effectively, a lawyer should have working knowledge of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design.¹¹

D. *Factual Investigation*

The skill of factual investigation plays a central role in the lawyering process and in the professional life of the lawyer. To effectively plan, direct, and participate in the process of factual investigation, a lawyer should be familiar with the skills, concepts, and processes used in determining whether factual investigation is needed, planning an investigation, implementing an investigative strategy, organizing information in an accessible form, deciding whether to conclude the investigation, and evaluating the information that has been gathered.¹²

E. *Communication*

Lawyers employ communicative skills, written and oral, in a wide variety of ways and a wide range of contexts. These include communications designed to advocate or persuade, such as written briefs, oral arguments on motions, and bargaining with an adversary; to advise or inform, such as opinion letters to a client, orally counseling or giving legal advice to a client, and briefing a senior partner; to elicit information, such as interviews of clients or witnesses, discovery depositions, interrogatories, and other formal and informal requests for discovery; and to establish legal obligations or effectuate legal transactions, such as drafting of contracts, wills, trust instruments, corporate charters, separation agreements, leases, documents transferring interests in real property, consent decrees, and statutes and administrative regulations. While these various types of communication differ substantially in substance and form, certain fundamental skills are essential to effective communication in each of these contexts. These

¹⁰ See *id.* at 151–57.

¹¹ See MACCRATE REPORT, *supra* note 2, at 157–63.

¹² See *id.* at 163–72.

skills include effectively assessing the perspective of the recipient of the communication and using effective methods of communication.¹³

F. Counseling

In a wide variety of contexts, lawyers counsel clients about decisions clients have to make or courses of action they are considering. In the context of litigation, for example, this may take the form of counseling a client about a settlement offer in a civil case, or a plea offer in a criminal case. Beyond litigation, it may take the form of counseling a client about estate planning or whether to file a bankruptcy petition. In order to counsel a client effectively, a lawyer should at least be familiar with the skills, concepts, and processes in establishing an appropriate counseling relationship with a client; gathering information relevant to the decision to be made by the client; analyzing the decision to be made by the client; counseling the client about the decision; and implementing the client's decision.¹⁴

G. Negotiation

The skill of negotiation is a fundamental part of legal practice that has increasingly become a subject of study for legal educators and scholars. In order to negotiate effectively, a lawyer should be familiar with the skills, concepts, and processes involved in preparing for a negotiation, conducting a negotiation, counseling a client about the terms obtained from the other side in a negotiation, and implementing a client's decision.¹⁵

H. Litigation and Alternative Dispute Resolution Procedures

This skill area focuses on the fundamentals of litigation and alternative dispute resolution that should be known by any lawyer whose practice calls for either or both of these courses of action, who advises a client about either or both of these options, or who engages in any type of problem solving or planning in a situation in which these options are available. For an attorney to effectively employ or advise a client about the options of litigation or alternative dispute resolution, a lawyer should have an understanding of the potential functions and consequences of these courses of action in relation to the client's situation and objectives, and he should have a working knowledge of the

¹³ See *id.* at 172-73.

¹⁴ See *id.* at 177-84.

¹⁵ See *id.* at 185-90.

fundamentals of trial court litigation, appellate litigation, advocacy in administrative and executive forums, and alternative dispute resolution.¹⁶

I. Organization and Management of Legal Work

Efficient organization and management of legal work is an essential precondition for competent practice. In order to organize and manage legal work effectively, a lawyer should be familiar with the skills, concepts, and processes required in efficient management, including the efficient allocation of time, effort, and resources; timely performance and completion of work; cooperation among co-workers; and orderly administration of the office. This skill area focuses on central aspects of practice management—efficient allocation of time, compliance with deadlines, and effective collaboration with others—which are applicable regardless of whether a lawyer is a solo practitioner, a partner or associate in a firm, or a lawyer in public service practice.¹⁷

J. Recognizing and Resolving Ethical Dilemmas

Competent, ethical practice requires more than just knowledge of the applicable rules and principles of professional responsibility. In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with the skills, concepts, and processes necessary to recognize and resolve ethical dilemmas. The focus of this area is the body of skills and knowledge with which a practitioner must be familiar in order to assure that he or she will consistently conform to ethical conduct.¹⁸

II. FUNDAMENTAL PROFESSIONAL VALUES FOR NEW LAWYERS

The MacCrate Report asserts that “[r]egardless of their particular fields of practice or specialties, lawyers are united by their pursuit of certain values.”¹⁹ These “fundamental values of the profession”²⁰ create a framework within which lawyers utilize professional skills. If it is perceived that new lawyers have an incomplete understanding of professional values, programs of transition education may consider inculcating professional values as an opportunity for additional training.

¹⁶ See *id.* at 191–99.

¹⁷ See MACCRATE REPORT, *supra* note 2, at 199–203.

¹⁸ See *id.* at 203–07.

¹⁹ See *id.* at 124.

²⁰ See *id.* at 140–41.

A. *Provision of Competent Representation*

The ABA Task Force on Professional Competence observed that the “goal of serving the public in a competent manner” must be a primary objective of every member of the profession.²¹ The ideal of competent representation requires that a lawyer strive to attain a certain level of proficiency in lawyering skills and a certain body of substantive knowledge.²² In other words, the ten skills outlined above, plus additional skills or knowledge required by the particular matter upon which the attorney acts, are included in the requirement for providing competent representation. The MacCrate Task Force concludes that for lawyers to provide competent representation, they should be dedicated to the service of clients and should be committed to the values of attaining and maintaining a level of competence in their own field of practice; and acquiring or refining additional skills and knowledge.²³

B. *Striving to Promote Justice, Fairness, and Morality*

Justice, fairness, and morality have been addressed by legal scholars and other members of the profession over the years on numerous occasions. Dean Roscoe Pound observed that the primary purpose of the profession is the “[p]ursuit of the learned art in the spirit of a public service.”²⁴ Justice Felix Frankfurter indicated that on behalf of clients, lawyers should embrace “those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as ‘moral character.’”²⁵

The MacCrate Report values statement identifies three central areas in which an attorney should strive to serve the public and to further the interests of justice, fairness, and morality.²⁶ Included are promoting justice, fairness, and morality in one’s daily practice; contributing to the profession’s fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; and contributing to the profession’s fulfillment of its responsibility to enhance the capacity of law and legal institutions to do justice.²⁷ Too

²¹ *Final Report and Recommendations, in 1992 ABA TASK FORCE ON PROFESSIONAL COMPETENCE 2.*

²² *See MODEL RULES OF PROF’L CONDUCT R. 1.1 (1983).*

²³ *See MACCRATE REPORT, supra note 2, at 207–12.*

²⁴ ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

²⁵ *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 247 (1957).

²⁶ *See MACCRATE REPORT, supra note 2, at 213–15.*

²⁷ *See id.*

often the Socratic method embraced by law schools emphasizes qualities that have little to do with justice, fairness, and morality in daily practice. Students too easily gain the impression that wit, sharp responses, and dazzling performances are more important than the professional moral values that lawyers must possess and that the profession must espouse.²⁸ It is a clear responsibility of the practicing bar to impress on students that success in the practice of law is not measured by financial rewards alone, but also by the lawyer's other activities to preserve a just, fair, and moral society.²⁹

C *Striving to Improve the Profession*

Membership in a self-governing profession, such as the legal profession, imposes upon lawyers an affirmative responsibility to participate in efforts to "assure that . . . [the profession's] regulations are conceived in the public interest and not in the furtherance of parochial or self-interested concerns of the bar."³⁰ There are numerous ways in which lawyers may contribute to the improvement of the profession. Included are participation in the various activities of national, state, and local bar associations; participation in organizations that provide an alternative to traditional bar associations; participation in processes for regulating the practice of law, such as the process of admitting new lawyers to the bar, for disciplining lawyers who have committed ethical infractions, or for regulating the continuing legal education process; service on commissions or similar bodies concerned with aspects of the administration of justice; and giving speeches or writing articles that evaluate the profession and propose reforms. Further, as a member of a self-governing profession, a lawyer should be committed to assisting in the training and preparation of new lawyers and the continuing education of the bar. Finally, lawyers should be committed to ridding the profession of biases based on race, religion, ethnic origin, gender, sexual orientation, age or disability, and to rectifying the effects of these biases.³¹

D. *Professional Self-Development*

While most of the skills and values listed in the MacCrate Report focus on competent practice, the commitment to professional self-development recognizes that a lawyer should not be content with simply

²⁸ See *id.* at 236.

²⁹ *Id.*

³⁰ See MODEL RULES OF PROF'L CONDUCT preamble (2004).

³¹ See MACCRATE REPORT, *supra* note 2, at 216.

attaining a level of competence, but should strive for a level of excellence.³² Striving for professional excellence involves seeking out and taking advantage of opportunities to increase one's own knowledge and improve one's own skills. Continuing study is an essential part of the process of attaining excellence. Further, as a practical matter, lawyers should select and maintain employment that will allow them to develop as a professional and to pursue their professional and personal goals.³³ Job dissatisfaction often leads to circumstances wherein an attorney cannot effectively pursue professional and personal goals, nor achieve excellence.³⁴

III. WHAT STATES REQUIRE SPECIAL TRANSITION EDUCATION FOR NEW LAWYERS AND WHEN?³⁵

At present, twenty-five states require some sort of specialized transition education for new lawyers.³⁶ While most states require the special courses post-admission, two states, Alaska and Colorado, require completion of a specified course prior to licensing; other states will permit completion either prior to admission or post-admission.³⁷ Following is a summary of the required programs and their completion schedules. In cases where information regarding completion deadlines was not specific, the use of the term "new admittee" presumes a post-admission requirement.

Alabama has a six-hour professionalism course for new admittees. Alaska's required ethics course must be completed prior to admission. Arizona's new admittees must complete a specified four and one-half hour professionalism program sponsored by the Arizona Bar Association within the first year of practice. Colorado's transition requirement must also be completed prior to admission and is a specified six-hour professionalism course sponsored by the Colorado Bar Association.³⁸

³² See *id.* at 219; see also MODEL RULES OF PROF'L CONDUCT preamble (2004).

³³ See MACCRATE REPORT, *supra* note 2, at 218-19; see also A.B.A. YOUNG LAW. DIV., THE STATE OF THE LEGAL PROFESSION Report no. 2 (1991).

³⁴ *The First Five Years of Practice*, 21 CONN. L. REV. 81, 83-86 (1988).

³⁵ In addition to the states that require completion of some type of "bridge-the-gap" program, many others have voluntary programs. The programs range from a videotape rental program in Arizona to an intensive hands-on program that lasts a week and a half in the State of Washington. See A.B.A. COMM. ON PROF'L EDUC., REPORT ON THE SURVEY OF BRIDGE GAP PROGRAMS (1985).

³⁶ TERRY J. BROOKS, COMPARISON OF THE FEATURES OF MANDATORY CONTINUING LEGAL EDUCATION RULES IN EFFECT AS OF JULY 2005 part 9 (N.Y. St. B. Ass'n 2005).

³⁷ *Id.*

³⁸ *Id.* at 92.

Delaware has one of the most extensive new lawyer requirements at six full-day courses. These courses are focused on fundamentals of law for new attorneys. With a menu of choices, each new admittee is required to complete Fundamentals of Lawyer-Client Relations plus any other two classes from the menu within four years of admission. The District of Columbia requires completion of a one-day course on professional conduct and D.C. practice within one year of admission.³⁹

The Florida State Bar allows would-be attorneys to complete the state's transition requirement up to eight months prior to admission, but it must be completed not later than twelve months after admission. This portion of the transition requirement consists of a Basic Skills Course, which includes "Practicing with Professionalism." In addition, new attorneys must attend two live basic level programs sponsored by the Young Lawyers Division of the Florida State Bar by the end of their first three-year MCLE reporting period.⁴⁰

The Georgia State Bar has recently expanded transition requirements for new admittees to include a mandatory mentoring program. The overall program of requirements is called the "Transition into Law Practice Program" and consists of two main components. The first is a twelve-hour CLE requirement that may be met by attendance at (a) Enhanced Bridge-the-Gap, focusing on lawyering skills and roles of lawyers, plus (b) Fundamentals of Law Practice with priority to those not practicing in association with experienced lawyers, or a comparable CLE component tailored to particular circumstances of a practice setting. All CLE components include a minimum of one ethics hour, one professionalism hour, and three hours of trial practice for attorneys practicing in litigation. The Institute of Continuing Legal Education in Georgia administers this portion of the program. The second, and an innovative approach to transition requirements, is the Mandatory Mentorship Program administered by Georgia's Commission on Continuing Lawyer Competence. This new program is designed "to afford every beginning lawyer newly admitted to the State Bar of Georgia with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment, and sensitivity to ethical and professionalism values necessary to practice law in a highly

³⁹ *Id.* at 93.

⁴⁰ *Id.*

competent manner.”⁴¹ All Georgia State Bar transition requirements are to be completed within the year of admission or the next calendar year.

Hawaii requires completion of a specified professionalism course sponsored by the Hawaii State Bar Association and the Hawaii Supreme Court. The court’s order does not specify the length of the program, only that it be completed within one year of election of active status.⁴²

The Idaho State Bar requires completion of a one-day basic skills program for new admittees within one year of admission. The transition program includes general office management, dispute resolution, court practice, and substantive area break out sessions.⁴³

The Kentucky Bar Association requires completion of a two-day New Lawyers Program that focuses on professional values and practice management. The program may be taken up to twelve months before admission, but it must be completed no later than twelve months after admission.⁴⁴

Maryland requires completion of a six-hour course on professionalism for its newly admitted attorneys. The program focuses on lawyer relations with other lawyers, clients, the court, and the community. Likewise, Missouri has a six-hour course for new admittees on legal professionalism, which is similar in content to the Maryland program, including lawyers’ relations with other lawyers, clients, the court, and the community.⁴⁵

New Hampshire’s transition requirement of practical skills must be completed within two years of admission. The course is a six-hour program presented by the New Hampshire Bar Association.⁴⁶

In New Jersey, the New Jersey Institute for CLE administers the state’s required transition program. This required skills and methods course of study specifies differing requirements spanning the first three years of admission. The first year program on mandatory skills and methods includes five six-hour days, including a six-hour course on

⁴¹ See State Bar of Georgia Website, http://www.gabar.org/programs/transition_into_law_practice_program/ (last visited Dec. 15, 2005).

⁴² See Amendment to the Rules of the Supreme Court of Hawai’i, http://64.29.92.27/HSBA/Legal_Seminars/Order.pdf (last visited Dec. 15, 2005).

⁴³ BROOKS, *supra* note 36, at 95.

⁴⁴ See KY. SUP. CT. R. 3.652.

⁴⁵ BROOKS, *supra* note 36, at 96.

⁴⁶ See *id.*

professional responsibility. The second year program includes a four-hour seminar on administrative law and a four-hour seminar on civil and criminal trial preparation. The third year program includes two four-hour seminars in substantive law areas.⁴⁷

In New York, new admittees are required to complete sixteen hours in transitional (basic) programs each year for the first two years of practice. The sixteen hours must be completed in three categories: ethics/professionalism, skills and law practice, and management.⁴⁸

Ohio instituted a special transition requirement in 2001. The new lawyer training consists of a single twelve-hour course of “predetermined subject matter” and must be completed no later than the end of the calendar year of admission.⁴⁹

The Oregon State Bar also has a post-admission transition requirement for all attorneys within one year after the year in which the attorney is admitted. The total requirement is fifteen hours of specified continuing legal education. The fifteen hours must consist of ten hours in practical skills; two hours of ethics, of which one hour must be on a lawyer’s child abuse reporting obligation; one hour on elimination of bias in the profession; and two hours on any subject.⁵⁰

The Pennsylvania Continuing Legal Education Board requires completion of a four-hour Bridge-the-Gap program by each attorney’s first MCLE compliance deadline.⁵¹ In Rhode Island, the Board of Bar Examiners requires each new attorney to complete an “Introduction to Practice” course and select four courses from a menu of introductory classes within two years of practice.⁵²

In South Carolina, the transition education requirement is completion of a three day, nineteen-hour, Bridge-the-Gap program sponsored by the South Carolina Bar CLE Division. The program may be completed prior to admission or as a new admittee.⁵³

⁴⁷ See *id.* at 97.

⁴⁸ See *id.* at 98.

⁴⁹ See *id.* at 99; see also *infra* Part IV (describing the current Kentucky new lawyer program).

⁵⁰ See *id.*

⁵¹ BROOKS, *supra* note 36, at 99.

⁵² See *id.* at 100.

⁵³ See *id.*

Texas attorneys are only required to complete a four-hour course on professionalism within one year of admission. In Utah, the transition education requirement is more extensive. New admittees are required to complete a one-day ethics seminar sponsored by the Utah Bar, plus twelve hours of specialized new lawyer continuing legal education sponsored by the Utah Bar and another twelve hours of any accredited continuing legal education.⁵⁴

Virginia, like many other jurisdictions, requires a one-day professionalism course for new admittees. The required course includes obligations to clients and courts plus substantive area breakout sessions.⁵⁵ In West Virginia, the required Bridge-the-Gap program is provided free of charge via video, CD, or DVD. It must be completed within six months prior to admission or twelve months after admission.⁵⁶

IV. KENTUCKY'S HISTORY OF TRANSITION EDUCATION

A. *The Past*

The Kentucky Bar Association has had, perhaps, one of the more interesting histories in the area of transition education. Perhaps its history is not so unusual among state bar associations, but as this author has had the opportunity to witness all of Kentucky's history, there are lessons to be learned that are worthy of passing along to others interested in bridge-the-gap programming efforts. What follows is the abridged version of "Kentucky's Checkered Past" when it comes to the trials and tribulations of transition education efforts.⁵⁷

During the period of 1987 through 1988, the Kentucky Bar Association sponsored a voluntary two-and-one-half day program for new attorneys. This "Basic Skills Course" was offered one time per year and had as its objective "to provide the recent law school graduate with practical information in the areas most likely to be encountered in the first years of practice."⁵⁸ The curriculum was substantive in nature (workers' compensation; wills, trusts and probate; district court practice; civil trial practice; pitfalls of appellate practice; real property; secured transactions; debtor-creditor relations; and criminal law) except for two

⁵⁴ *See id.*

⁵⁵ *See id.* at 101.

⁵⁶ *See id.*

⁵⁷ Janis E. Clark, Presentation to the Organization for the Regulatory Administration of Continuing Legal Education, Bridge the Gap: Kentucky's Checkered Past (1998) (on file with author).

⁵⁸ JANIS E. CLARK, BRIDGE THE GAP SPEED TOPIC 12 (ORACLE 2004).

sessions on lawyer discipline problems and organization and management of the small law firm.⁵⁹

In 1988, the Basic Skills Course was dusted off, reorganized, beefed up, and trotted out as “The Bridge the Gap Institute.” This program was also voluntary but was the pilot version of a program that the Kentucky Bar Association developed in anticipation of a mandatory Bridge-the-Gap requirement from the Kentucky Supreme Court. Its objective was similar to that of the Basic Skills Course, but it was extended to include efforts to “develop an initial level of competency as a practitioner.”⁶⁰ The three-day program was broken into six main program areas: (1) Back to Basics: The Kentucky Bench and Bar: Who Are We? What Do We Do? Legal Writing, Management Issues in the Modern Practice of Law, including Time and Stress Management, Use of Paralegals and Other Staff, and Law Office Automation and Economics; (2) You are Now an Officer of the Court: Ethics and Professionalism for the New Attorney, including Disciplinary Problems, Client Relations, Relationships with Judges and Other Attorneys, Lawyer Advertising, and Malpractice Avoidance and Client Trust Accounts; (3) Sharpening Litigation Skills: Criminal Trial Preparation and Preparation of the Civil Case; (4) Business Basics: Organization of Corporations and Small Businesses, How to Collect a Judgment, Debtor-Creditor Relations, Real Property Transactions, and Basics of Bankruptcy; (5) General Practice Pointers: Family Law Practice, Juvenile Law Practice, Wills and Probate, and ADR; and (6) Administrative Practice and Procedure: Federal and State Boards and Commissions, Workers’ Compensation, and Social Security Disability.⁶¹

The Bridge-the-Gap Institute was tweaked after the pilot program and was established as a mandatory program by the Kentucky Supreme Court beginning in 1989. The subtitle “The Art of Lawyering” was added to the program name and was offered three times during the year to allow all new members an opportunity to attend. The course objective was to ease the transition from law student to lawyer and to increase lawyer competency, thereby improving the image of the profession. The three day curriculum included five focal areas: (1) Attorney Accountability: To the Client, To the Public, To the Court and To Other Members of the Bar; (2) Criminal Practice and Procedure; (3) Substantive Law Review: The Practitioner’s Point of View (Family Law, Workers’

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 12-13.

Compensation, Small Business and Corporation Law, Debtor-Creditor Relations and Bankruptcy, Real Property, and Wills and Probate); (4) The Court System (District Court, Circuit Court, Kentucky Appellate Practice, Federal Court); and (5) Civil Trial Practice.⁶²

In the first year, the program appeared to be as well received as is possible for a mandatory program. Based on comments from attendees and a thorough evaluation by Kentucky's Continuing Legal Education Commission and Young Lawyers Section, additional small changes were made after the maiden voyage of the new program to offer greater options to attendees based on actual areas of practice. Break-out sessions were added and the program was ready for its second year, starting with a program scheduled for August, 1990.

However, it appears other individuals had other ideas about the program. Upon returning from vacation in July, 1990, the director of the program received a voice mail message at home alerting her to call the Kentucky Bar Association's Executive Director before she returned to work after vacation. Such a phone message never means good news. The director expected to be job-hunting shortly thereafter, but was unsure of what occurred. While the news was not that bad, it was nevertheless bad. The newly re-designed, concurrent session format bridge-the-gap program was never to see the light of day. The Kentucky Supreme Court had summarily suspended the rule requiring attendance at the program by new attorneys. At that point, not knowing any reasoning behind the action, the Continuing Legal Education Commission canceled the upcoming August program, not even offering it as a voluntary program. Additional research told us what we needed to know and lessons were learned. The primary lesson learned from this situation is to never underestimate the power of supreme court law clerks! Six of the seven law clerks had complained to their respective justices because they felt that the program should not apply to them. Without any prior consultation with, or notice to, the Kentucky Bar Association, the Bridge-the-Gap Institute was history after one year.⁶³

July, 1990 through December, 1993 was a time of re-grouping on the Bridge-the-Gap issue in Kentucky. The Young Lawyers Section and the Continuing Legal Education Commission considered the dilemma. What was to be done regarding transition education in Kentucky, if anything? Should a voluntary program be re-instituted? Should

⁶² *Id.* at 13.

⁶³ *Id.*

internships be created? Many ideas were discussed, debated, considered, and evaluated.

Around the same time, another voluntary program, the Practical Skills Institute, was introduced. Beginning in November, 1991, and concluding in February, 1992, the Kentucky Bar Association hosted three one-day satellite simulcast seminars. The program was up-linked live from a studio and broadcast to seven locations around the state. Telephone lines were available for attendees to use to call questions into the studio for faculty answers. The programs took place on three Saturdays over a four-month period. The program was established in this format because Kentucky Educational Television's STAR Channel, which was utilized during the week for elementary and secondary education, was available for other educational uses, free of charge, on Saturdays. The course objective for this series of programs was fairly simple: to deflect the criticism of former programs that were expressed by the Supreme Court of Kentucky (or the clerks thereof) and to show there was a need and support for this type of programming at the state bar level.⁶⁴

The curriculum of the Practical Skills Institute included three separate focal areas, one for each day of the program. The first program was entitled "Learning to Practice the Profession." The one-day format included: Introduction to the Practice; Practical Considerations of Management, Workloads, Delegation, and Law Office Personnel; Client Relations: Put Your Best Foot Forward Starting with the Interview; and Avoiding Malpractice by Doing it Right. The second Saturday installment focused on "Deposition Skills and Your Day in Court." Sessions included: Proper Preparation of the Attorney and Witness for a Deposition; How to Depose Fact Witnesses and Parties; How to Depose the Expert Witness; District Court Practice; Circuit Court and Motion Practice; The Role of the Circuit Clerk; The Federal Courts; and Trial Skills Demonstration and Critique—The Automobile Case. The final installment dealt with "Nuts and Bolts 'How To's' for Your Case." The individual sessions were: Before the Complaint is Filed—Practical Considerations of Case Selection, Investigation, and Negotiation; Insurance Issues—Negotiating with Adjustors, Communicating with Insurance Companies, and Settling the Case; Practical Considerations of Trying the Civil Case—Plan of Action, Lining Up the Witnesses, and Checking Out the Jury; From 'the Call' through Sentencing—How to

⁶⁴ CLARK, *supra* note 58, at 13-14.

Handle the Criminal Case; How to Handle a Divorce; and From Running the Title to Closing the Loan – Real Estate Transactions Made Easy.⁶⁵

In spite of a \$6,000 budget cut during the middle of program production and transmission, the program was well-attended and well-received. However, it became clear that absent continued donated airtime from Kentucky Educational Television, which could no longer be arranged, the end of the Practical Skills Institute was near. In spite of strong support, the program ended after one round and only course materials were made available to new attorneys. Videotapes had been produced from the transmission and were made available to local bar associations for use in attracting younger members. Another chapter in the history of Kentucky transition education efforts unceremoniously closed.⁶⁶

In October, 1991, the Kentucky Bar Association's Lawyer Professionalism Committee joined the battle for the adoption of a new mandatory transition education program and made such a recommendation to the Board of Governors of the bar. The emphasis of the program envisioned by the Professionalism Committee was to be professionalism and practical skills. The Continuing Legal Education Commission, with support of its liaison to the supreme court, the Young Lawyers Section, the Board's Rules Committee, and the Lawyer Professionalism Committee, worked in earnest toward the development of a rule and program the court would be able to embrace.

Members of the groups made great efforts to sell the program to bar members and to members of the court. History had indicated the "Bridge-the-Gap" moniker had created very negative feelings among some at the supreme court so one early decision was to avoid that term for fear of confusion with the old (and very dead) mandatory "Bridge-the-Gap" program. It may have only been a name, but it was considered by all parties to have bad karma and was avoided at every turn, just in case there were lingering doubts. Simply titled "The New Lawyers Program," the plan included a two-day mandatory program of professional values and practical management tips for new practitioners, taking direction for programming from recommendations included in the MacCrate Report.⁶⁷ The rule and program, along with substantial statements of support from the various constituent groups of the Kentucky legal community and justification based on the MacCrate

⁶⁵ *Id.* at 14.

⁶⁶ *Id.*

⁶⁷ See MACCRATE REPORT, *supra* note 2, at n.1.

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Report, were introduced to the court and the membership at a public hearing in June of 1993. The court adopted the rule and program, and the court made it effective for all Kentucky Bar Association admittees beginning January 1, 1994.⁶⁸

B. *The Present*

Kentucky's current New Lawyer's Program is quite similar to the program approved by the court over ten years ago. Small changes have been made in response to evaluations and a greater number of break-out topics are offered in response to a focus group study. The program is offered in its current two-day live format twice per year in various locations.

The program agenda includes an opening discussion by the program moderator of "Why Am I Here, Anyway?" to explain the objectives of transition education programs and to provide the new lawyers with information about who is there to help them and why. The program includes various staff and officers of the Kentucky Bar Association to welcome the new attorneys and to explain the various services, service opportunities, and member responsibilities of the Kentucky Bar Association. These sessions, "The Kentucky Bar Association: Your Partner in the Profession" and others, seek to establish lines of communication between the new members and the organized bar so new members better understand the community of which they have become a member and so that help will be sought if needed. "Getting Started: Young Lawyer Survival Tips" is a lively mix of new attorneys offering their tips and answering questions. Many questions are prepared in advance in case there are no questions from the audience, and such questions help to steer the discussion along the path of professionalism and practical management tips. A strong and quick-witted panel moderator is highly recommended for effectiveness. This session is a favorite among attendees.

Sessions also include: "An Attorney's Relationship with Clients"; "The Attorney's Duty to the Court"; "The Image of the Profession and the Attorney's Responsibility to the Profession"; "Stress in the Life of the Lawyer"; "Malpractice Avoidance Guide"; "The Ethics of Preparing a Witness for Depositions"; "Using the Internet as a Research Associate: Legal, Medical and Technical Resources"; "Starting Your Own Law Office"; "The Ethical Dilemmas Presented by Lying Clients"; "Getting

⁶⁸ See Clark, *supra* note 57, at 15; see also KY. SUP. CT. R. 3.652 (providing the full text of the rule requiring completion of the New Lawyers' Program).

and Keeping Clients the Right Way”; “The Ethics of Time-Keeping and Billing”; “Ethical Issues for Prosecutors and Criminal Defense Attorneys”; “Money Traps for Lawyers: Client Trust Funds and Beyond”; and “Ethical Issues in Domestic Relations Cases.”

The Kentucky Bar Association has had success with the program. One of the strong points of the program is its consistency in moderator and faculty. As for the program moderator, the force of personality can work wonders in this position. The current moderator is professional in an understated way. His stories all have learning points and none are told without some humor. His dedication to the profession generally, and to new lawyers specifically, is inspirational to all. The moderator keeps the program flowing and is present for all program portions (serving as faculty for some sessions as well), thus tying the various program elements together into a tight, cohesive package of professionalism and practice tips. When necessary, the moderator serves as program disciplinarian in a forceful but friendly way, removing that burden from the staff of the program.⁶⁹

The New Lawyer’s Program faculty is also a great benefit to the program. The Kentucky Bar Association is fortunate to have some of the finest and most dedicated attorneys in the state donate their time to serve as faculty for this program year after year. Not only are these individuals well versed and well informed in their area of expertise, but they are also pillars in their local communities and serve as outstanding professional role models for new attorneys. All faculty members provide personal contact information to attendees should they need advice or assistance in their daily practice beyond the scope of the program. Many faculty members routinely mentor new lawyers after the programs when called upon. The faculty also represents the diversity of the Kentucky Bar Association membership. In addition, a mix of young professionals as well as seasoned attorneys is important for the faculty mix to allow a variety of viewpoints. A consistent and long-term faculty dedicated to the goals of the program is a must for successful transition education programs and can be found in Kentucky’s New Lawyer’s Program.⁷⁰

Other important elements of the Kentucky New Lawyer’s Program include: continued support by the supreme court justices and the bar leadership; creative and flexible program planning; a wide mix of

⁶⁹ See Clark, *supra* note 57, at app. F, 17.

⁷⁰ See *id.*

learning formats; extensive use of interactive programming methods to ensure attendee participation; use of well-designed and consistent audio-visual aids where appropriate; significant participation by law related vendors with substantial product raffles; social activities; program evaluation and feedback; free CDs with substantive law practice tips and forms from the New Lawyers Section; and access to additional bar and bench resources.⁷¹

C. *The Future*

While the program is working well as it currently exists, the Kentucky Bar Association continues to evaluate and re-evaluate its transition education efforts to keep the program relevant to those it is intended to serve. Concerns expressed regarding the present format include the travel from various corners of the state to the more central locations utilized for the programs and the cost of lodging and meals for newer attorneys. In addition, time away from work is an issue with two to four days of work impacted, depending upon how far the attorney travels. Further, if portions of the program are missed, an attorney is required to return to the next live program to make up the missed sessions, sometimes at considerable expense. The practical limitations of space and time also limit the availability of topics.

These practical and logistical concerns have resulted in new plans for Kentucky's transition program that are currently under development. Specifically, e-learning units are being developed and will be available on the Kentucky Bar Association website in 2006. A broader range of topics will be available and new attorneys will be able to select a minimum of six of those of greatest interest and applicability to their practice. Units will be completed one at a time, as suits the scheduling demands of the new attorney, so long as they are completed within twelve months of admission to the bar. In addition, the live portion of the program will be limited to one day. Thus, many of the positive aspects of the program, the collegiality; opportunities to network with bar leaders, faculty, and staff; and the opportunity to receive free legal resources will be retained while addressing legitimate logistical and practical concerns. The Kentucky Bar Association is working with online educational design specialists through Sullivan University in Louisville, Kentucky, to develop the new units. A bright future is expected for transition education at the Kentucky Bar Association utilizing the new format.

⁷¹ See *id.* at 16-18.

V. CONCLUSIONS

If professional competence and responsibility are the ultimate goal of legal education, it is troubling that so many young lawyers are still seen as lacking essential skills and values at the time they assume the responsibility of handling client's legal affairs. Much remains to be done to improve the preparation of new lawyers for practice, both in law school, after law school, and in bridge-the-gap and other skills-oriented transition programs.⁷²

In reviewing the programs required by many states in the context of the MacCrate Report skills and values framework, it appears many state programs focus on the professional values aspect. Some sort of professionalism or ethics subject matter is included in the great majority of the programs. However, skills training still seems to be lacking in many of the programs. While some substantive topics are covered in many state programs, the format tends to be lecture or material coverage only and does not involve true skills training to any great extent.⁷³

There are several reasons that actual skills training is not generally included in transition programs offered by the organized bar.⁷⁴ First, such instruction is extremely labor intensive. In dealing with volunteer faculties at the bar level, labor intensive undertakings are quite difficult to accomplish. Many faculty members are neither interested in learning the new teaching methods, nor do they have the time to devote to the more extensive volunteer effort at the expense of their practice and clients. In addition, the resultant cost associated with labor intensive training also limits the availability of such training by non-profit bar organizations with budgetary constraints. Finally, time limitations of new attorneys make skills training somewhat unrealistic.

In the final analysis, what may be viewed as a skills gap on the part of new attorneys, or a training gap on the part of the organized bar, may

⁷² See MACCRATE REPORT, *supra* note 2.

⁷³ The American Bar Association defines skills training as including client contact (representing actual clients); simulations (exercises with critique and feedback to teach interviewing, counseling, negotiation, trial practice, etc.); placement/internship (programs in which students are placed in offices or agencies); and other skills instruction. While several jurisdictions have required "apprenticeships" or other placement/internships activities as an admission requirement in the past, now only two states, Vermont and Delaware, continue these requirements, which are generally completed while in law school. See MACCRATE REPORT, *supra* note 2, at 238 n.3, 287-88.

⁷⁴ Skills training is more successfully undertaken in the law firm setting, and many large firms have extensive new associate programs.

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also be defined as a gap between what can realistically be accomplished within the existing legal education framework and the expectations placed upon new lawyers, law schools, and the organized bar.⁷⁵

The model for legal training utilized by the profession in the Commonwealth jurisdictions and some other European countries may be more promising models for addressing any gap that exists, although these programs are not without their detractors.⁷⁶ These countries use training models similar to those of the American medical profession with required “on the job” training. However, absent a unified approach to such an effort at the national level, such requirements are unlikely at the present in the American legal profession. As the organized bar is largely a creature of the state judiciary, varying somewhat from state-to-state, such efforts seem more likely for debate than for action.

But short of adopting the internship and residency model of the medical profession or the articleship model of other countries, there is limited action that can be taken by the organized bar to improve new lawyer competency. However, it is important for the practicing bar to recognize that it has different capacities and opportunities than law schools to impart required skills and values to future lawyers and to focus on those areas in which the greatest capacities and opportunities exist.⁷⁷

The organized bar has a positive obligation to aid in the continued improvement of all phases of continuing legal education, and the profession depends greatly upon its members to assist in the enterprise of educating new lawyers and preparing them for practice.⁷⁸ What is required to bridge or narrow the often identified gap between law school and law practice, then, is “a bar committed to the process—one that shares its experience; works constructively with the academy, the bench,

⁷⁵ See MACCRATE REPORT, *supra* note 2, at 241.

⁷⁶ Ken Howard, *Developing Lawyer Competence: Are Other Countries Doing a Better Job?*, THE ADVOCATE, Mar. 1995; see also MACCRATE REPORT, *supra* note 2, at 287 n.34. But see Audrey Blunden & Les Handler, *A New Course at the New South Wales College of Law*, J. PROF. LEGAL EDUC., June 1987, at 42, 43 (noting “widespread dissatisfaction” with articling); David A. Cruickshank, *The Professional Legal Training Course in British Columbia*, J. PROF. LEGAL EDUC., Dec. 1985, at 111–12.

⁷⁷ See MACCRATE REPORT, *supra* note 2, at 234.

⁷⁸ See MODEL RULES OF PROF'L CONDUCT preamble (2004) (“As a member of a learned profession, a lawyer . . . [should] work to strengthen legal education.”).

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and admitting authorities; and accepts an appropriate share of responsibility for the professional development of [new] lawyers."⁷⁹

⁷⁹ See MACCRATE REPORT, *supra* note 2, at 216.