

## Georgia State University Law Review

---

Volume 6  
Issue 2 *Spring 1990*

Article 3

---

3-1-1990

# What is Legal Education? And Should We Permit It to Continue in Its Present Form?

Herma Hill Kay

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Herma H. Kay, *What is Legal Education? And Should We Permit It to Continue in Its Present Form?*, 6 GA. ST. U. L. REV. (1990).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol6/iss2/3>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

# GEORGIA STATE UNIVERSITY LAW REVIEW

---

---

VOLUME 6

NUMBER 2

SPRING 1990

---

---

## WHAT IS LEGAL EDUCATION? AND SHOULD WE PERMIT IT TO CONTINUE IN ITS PRESENT FORM?

*Herma Hill Kay*†

### INTRODUCTION

What is this thing called legal education? It is a process that takes an ordinary human being, preferably a college graduate, and turns him or her into a person who thinks like a lawyer. What does it mean to think like a lawyer? You can spot it right away. The ordinary human being, wishing to give an orange to a friend, will just hand it over, saying, "Here, take this orange." A lawyer, to do the same thing, says something like this:

Know all men by these presents that I hereby give, grant, bargain, sell, release, convey, transfer, and quitclaim all my right, title, interest, benefit, and use whatever in, of, and concerning this chattel, otherwise known as an orange or citrus orantium, together with all the appurtenances thereto of skin, pulp, pip, rind, seeds, and juice, to have and to hold the said orange together with its skin, pulp, pip, rind, seeds, and juice for his own use and behoof, to himself and his heirs

---

† Richard W. Jennings Professor of Law, University of California at Berkeley; President, Association of American Law Schools, 1989; B.A. 1956, Southern Methodist University; J.D. 1959, University of Chicago. This essay is an extended version of remarks delivered as the Fall 1989 Henry J. Miller Distinguished Lecture at the Georgia State University College of Law on September 28, 1989.

in fee simple forever, free from all liens, encumbrances, easements, limitations, restraints, or conditions whatsoever, any and all prior deeds, transfers or other documents whatsoever, not or anywhere made to the contrary notwithstanding, with full power to bite, cut, suck, or otherwise eat the said orange or to give away the same, with or without its skin, pulp, pip, rind, seeds, or juice.<sup>1</sup>

As you can tell from this example, a lawyer's thought is precise. So precise, in fact, as sometimes to be unhelpful. You know the story of the two people in the balloon? They were crossing the ocean, but had lost their way. Just as they were running out of food and water, they saw land. They descended toward the ground, but they were afraid to come down all the way until they knew where they were. Suddenly they saw a man walking along the shore. They descended some more, getting closer so they could ask him where they were. One called out, "Where are we?" The man looked at them carefully, then called back, "You're in a balloon." One of the two people said to the other, "Just our luck. The only human being in sight and he has to be a lawyer." The other asked, "How do you know he's a lawyer?" Said the first, "Well, it's obvious. What he told us was completely accurate, and totally useless."

## I. THE PRACTICE OF LAW TODAY

### A. *Increasing Salaries and Business*

What lawyers tell most people, however, is not useless, if the value of their advice is measured by the standard of what people are willing to pay for it. Entry level lawyers are being paid astronomical sums by the big law firms: self-reported data from major firms indicates that 1989 graduates were paid between \$73,000 and \$76,000 in New York; \$65,000 in Los Angeles and Chicago; \$60,000 in San Francisco; and between \$55,000 and \$65,000 in Atlanta.<sup>2</sup> These figures do not include the emerging practice of paying "bonuses" of \$2,000—\$5,000 for clothing or relocation expenses, or just for graduating. When the bonuses

---

1. Moskowitz, *How to Insure Cloudy Writing*, San Francisco Chron., Dec. 2, 1978, at 35, col. 6 (quoting Robert H. Mundheim, then U.S. Dept. of the Treasury General Counsel).

2. Data reported to the Office of Career Services at the University of California, Berkeley, School of Law on the form provided by the Nat'l Ass'n for Law Placement (NALP), Aug. 1989; as reported to Professor Kay by Director Lujana Treadwell, NALP President, Sept. 5, 1989.

are included, the compensation package offered by some New York law firms exceeded \$80,000 last year.<sup>3</sup> The sports world practice of giving bonuses for signing on has not yet invaded the legal community's hiring of law graduates, but that practice cannot be far away.

The rising salary figures are not welcomed by everyone. Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit is critical of the impact the high salaries will have on lawyers' career choices.<sup>4</sup> Judge Edwards points out that at the same time the major firms are raising entry level salaries, "we are struggling in vain to deal with legal services to the poor and middle class, as the public-interest bar continues to shrink."<sup>5</sup> Thomas Clay, a managing partner at Altman & Weil in Pennsylvania, objects that "[f]ew attorneys fresh out of law school are worth \$80,000 . . . it's just a matter of time before clients start to revolt and say, 'I'm not going to allow someone with that small amount of experience to do my work at these prices.'"<sup>6</sup>

The business of the major firms, however, is also on an upward spiral, particularly in New York. The *American Lawyer's* 1988 survey of the 100 U.S. law firms with the highest gross revenue disclosed that these firms grossed \$10.6 billion in 1988, representing a 23 percent increase over the \$8.6 billion gross reported in 1987.<sup>7</sup> This income translates into some very impressive figures on average profits per partner for the most recent fiscal year (cutoff date was April 1, 1989). Here are some examples from law firms in the cities mentioned above: In New York, Cravath, Swaine & Moore had the highest average during the last fiscal year, distributing an average of \$1,595,000 to each partner; Gibson, Dunn & Crutcher and O'Melveny & Myers in Los Angeles were tied for 19th place at \$560,000 each.<sup>8</sup> The highest ranked Chicago firm on the profits per partner scale was Kirkland & Ellis, which ranked 11th at \$745,000.<sup>9</sup> Baker & McKenzie, the largest U.S. law firm by size, with 1098 lawyers and 373 partners, ranked 58th with profits per partner of

---

3. See Anderson, *Wage Spiral*, 75 A.B.A. J. 26, 26 (1989).

4. *Id.*

5. *Id.*

6. *Id.*

7. Brill, *A Boom in Premium Deal Work*, AM. LAW., July–Aug. 1989, at 6 (profit per partner figures are from a table at 34–38).

8. See *id.* at 34.

9. *Id.*

\$300,000.<sup>10</sup> King & Spalding in Atlanta ranked 31st with a \$390,000 profit per partner.<sup>11</sup>

It is useful to place these figures in perspective. The total number of lawyers working in the 100 law firms included in the *American Lawyer's* survey was 31,222.<sup>12</sup> The profession as a whole numbers approximately 724,000.<sup>13</sup> An American Bar Association survey in 1988 found the national median income for lawyers to be \$68,922.<sup>14</sup> Even when seen in this context, Judge Edwards would presumably find the salaries offered by major firms disturbing. He seems to deplore the fact that "[a] disproportionate percentage of the ablest members of a generation are devoting their entire careers to serving the legal needs of corporate America."<sup>15</sup>

### B. *Lawyers As Agents of Social Change*

Not only is legal advice expensive, it is influential. Law is an instrument of social control, and many lawyers see themselves as agents of social change. They are attracted to the legal profession, not merely because it pays well, but because it offers the opportunity to help make the world a better place, by securing justice for all people. Public interest lawyers generally see themselves in this category. These lawyers expect to earn less than their counterparts at the major law firms—and they do. The entry level salary for a public interest lawyer usually ranges between \$20,000 and \$25,000 per year.<sup>16</sup> In addition, as Judge Edwards noted, the number of public interest lawyers is shrinking.<sup>17</sup> But their satisfaction seemingly comes from doing work they see as advancing the cause of justice.

The interesting thing about this view of the lawyer's role is that different people have different views of what constitutes justice. To take a current example, some people believe that "justice" requires the protection of human life from the moment

10. *Id.* at 36.

11. *Id.*

12. *Id.*

13. U.S. Dept. of Labor, Bureau of Labor Statistics, unpublished tabulation from the Current Population Survey, 1988 Annual Averages (available in Georgia State University College of Law Library).

14. Jost, *What Image Do We Deserve?*, 74 A.B.A. J. 47, 48 (1988).

15. Anderson, *supra* note 3, at 26.

16. Nat'l Ass'n for Law Placement, Press Release at 2 (Oct. 31, 1989) (available in Georgia State University College of Law Library).

17. *See supra* text accompanying note 5.

of conception, while others believe it requires the recognition of a pregnant woman's right to decide whether to give birth. Obviously, lawyers as individuals are on both sides of the abortion debate, like the rest of American society seems to be. But my point is that lawyers are also on both sides of this question *as lawyers*. Moreover, the legal profession recognizes and supports the advocacy of different values as appropriate roles for lawyers to play. For example, lawyers have an ethical obligation to donate some of their professional time to pro bono work.<sup>18</sup> An article describing the pro bono work done by a Los Angeles law firm noted that one associate donated her time to Planned Parenthood in an effort to preserve legal abortion as an option for women, while a senior partner in the same firm was giving his time to a local right-to-life group seeking to prohibit abortion.<sup>19</sup> The United States Supreme Court received the record number of seventy-eight amicus curiae briefs when it was considering the abortion case *Webster v. Reproductive Health Services*<sup>20</sup> last term. The briefs were filed on behalf of individuals and groups ranging from scientists to religious spokespersons, from professors to legislators, from women's rights groups to right-to-life groups.<sup>21</sup> But all of them were written by lawyers, and you can be sure that they all made plausible, if not equally convincing, legal arguments.

### C. *Expanding Interest in Legal Careers*

The legal profession, then, offers unparalleled opportunities to make money, to influence the public agenda according to your own taste, and to help people. These characteristics are once again making the legal profession attractive to young people. After several years of decline, the number of candidates seeking admission to law school is on the rise. In the 1989 test cycle, 136,367 people took the Law School Admission Test (LSAT): that is the largest number of candidates ever to take the LSAT in a single cycle since its inception.<sup>22</sup> A total of 83,107 applicants filed 371,486 applications to the 175 ABA-approved law schools for the

---

18. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-25, EC 8-3 (1989).

19. Granelli, *The Pro Bono Work in One Medium-Size Firm*, 2 CAL. LAW. 23, 24 (1982).

20. 109 S. Ct. 3040 (1989).

21. See Kolbert, *The Webster Amicus Curiae Briefs: Perspectives on the Abortion Controversy and the Role of the Supreme Court*, 15 AM. J. LAW & MED. 153 (1989).

22. Telephone interview with Jim Vaseleck, Deputy Vice President of Public Affairs, Law School Admission Service (Mar. 27, 1990).

entering class of 1989.<sup>23</sup> These figures represent a 10.9 percent increase in the number of applicants and a 17.8 percent increase in the number of applications over 1988, which also exhibited a similar increase over 1987.<sup>24</sup>

Final national figures as to how many applicants were accepted will not be available until October.<sup>25</sup> I can, however, give you figures for my law school at Berkeley: we had 5851 applicants for our first year class, a figure that represented an 11 percent increase over 1988 and a 40 percent increase over the past two years. We enrolled 273 students, giving us an enrollment rate of 4.7 percent. These entering students are superbly qualified: their median grade point average is 3.7, and their median LSAT is 43 (which is in the 97th percentile of all scores). Students of these qualifications are by no means limited to Berkeley; it seems that the legal profession is in danger once again of being blamed by President Derrick Bok of Harvard for draining off the "best and brightest" of the younger generation.<sup>26</sup>

#### D. *Public Perception of the Legal Profession*

Despite its increasing attraction for young people, however, the legal profession does not enjoy high popular esteem. The public has traditionally seen lawyers as "hired guns" who are willing to represent any position for a fee, regardless of the public interest. Thus, Jonathan Swift described lawyers in 1726 in his book, *Gulliver's Travels*, as "a [s]ociety of [m]en . . . bred up from their [y]outh in the art of proving [b]y words multiplied [sic] for the [p]urpose that [w]hite is [b]lack, and [b]lack is white, according as they are paid."<sup>27</sup> Popular jokes at lawyer's expense are well known.<sup>28</sup> People say that lawyers have a better chance of surviving a shipwreck in shark-infested waters because the sharks give lawyers professional courtesy. Even lawyers tell

23. 89-90 *Year-to-Date Volume . . . Year-end Analysis*, 89-4 NEWSLETTER OF THE LAW SCHOOL ADMISSION COUNCIL/LAW SCHOOL ADMISSION SERVICES 18 (1989).

24. *Id.*

25. See LAW SERVICES REPORT, *National Decision Profiles* (1988-89) (51,000 individuals, representing 62% of the total applicants, were accepted to at least one ABA-accredited law school).

26. Bok, *A Flawed System*, HARV. MAG., May-June 1983, at 38, 41.

27. J. SWIFT, *GULLIVER'S TRAVELS* 224 (A. Ross ed. 1726).

28. See, e.g., A. ROTH & J. ROTH, *DEVIL'S ADVOCATES: THE UNNATURAL HISTORY OF LAWYERS* (1989); L. WILDE, *THE ULTIMATE LAWYER'S JOKE BOOK* (1987); R. WOODS, *THE MODERN HANDBOOK OF HUMOR* 154-60 (1967).

jokes at their own expense. For example, it seems that the Deans of the School of Law, the School of Engineering, and the School of Medicine at a leading university were having lunch one day, and they started talking about which of their respective professions was the oldest. The Medical School Dean said, "Why, there's no question that we are the oldest. The Bible tells us that God created Eve from Adam's rib, thus performing the first surgery." The Engineering Dean claimed his profession to be still older, pointing out that God created the world before He made Adam and Eve: "The Bible says that God created Order out of Chaos to make the universe. Now, that was certainly an engineering feat!" The Law School Dean didn't hesitate for a second. Looking at the Engineering Dean, she said, "You've just proved my case. Who do you think was responsible for all that chaos?"

My colleague, Robert Post, has speculated that the popular hostility toward lawyers is related to the fact that lawyers are professionally associated with many of society's conflicts over deeply-held cultural values, and that people are ambivalent about such conflicts.<sup>29</sup> As he puts it,

[w]e do not live in a society ordered by a spontaneous, coherent system of values, but instead in a wildly pluralistic culture, in which individuals constantly struggle to achieve recognition for the legitimacy of their private perspectives. We have organized our legal system so that lawyers speak for the specific and particular sides of this struggle. Most commonly, when a lawyer argues for one interpretation of a law rather than another, she is arguing for one ordering of values, rather than another.

Value is thus pitted against value, and . . . lawyers are the shock troops, threatening to tear down what we have spontaneously in common.

....

We hate [lawyers] because they are our own dark reflection. We use lawyers both to express our longing for a common good, and to express our distaste for collective discipline. When we recognize that the ambivalence is our own, and that the lawyer is merely our agent, we use the insight as yet another club with which to beat the profession.<sup>30</sup>

---

29. See Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CALIF. L. REV. 379, 385-86 (1987).

30. *Id.* at 386.



## II. ISSUES IN LEGAL EDUCATION

A. *Current Reform*

Criticism of lawyers and the legal profession frequently translates into criticism of legal education. It is easy to understand why this should be so. Although some states, including California, permit applicants to take the bar examination without formal legal training, for the overwhelming majority of lawyers, the 175 ABA-accredited law schools are the gateway to the profession. Dissatisfaction with the role or conduct of lawyers frequently is expressed in the form of proposals to reform legal education. Thus, in the aftermath of the Watergate scandal, which exposed lawyers turning their professional skill to "dirty tricks" designed to re-elect President Nixon, law schools were called upon to institute courses in legal ethics and professional responsibility.<sup>31</sup> Today, not only do such courses exist in most law schools, but thirty-two states and the District of Columbia require bar applicants to take the Multistate Professional Responsibility Examination (MPRE) in order to be admitted to practice law.<sup>32</sup>

It seems appropriate to reexamine some of the current efforts to reform legal education, at this moment when the law schools are once again attracting large numbers of new students. These reform efforts have their source both within and without legal education. Some of them represent the contemporary phase in long-standing movements to redefine who lawyers are and what they should do. Others represent relatively new initiatives.

We are only now beginning to see the results of a major stimulus for change in the legal profession that began nearly a century ago in the efforts of groups who were excluded from the profession to gain access to its ranks. At the beginning of the twentieth century, the legal profession in the United States was a "gentlemen's club" composed almost entirely of white men.<sup>33</sup>

---

31. See Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 AM. B. FOUND. RES. J. 247, 248-49 (1979).

32. ABA Section of Legal Education and Admissions to the Bar & Nat'l Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 1989*, Chart VI at 18-19 (1989) (states which require the MPRE are: Alabama, Alaska, Arizona, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, West Virginia, and Wyoming).

33. See *infra* text accompanying notes 37, 39. See also C. EPSTEIN, *WOMEN IN LAW* 14-15 (1981).

One of the most profound changes in legal education since that time has been the demographic shift in the student body. The face of the student body has changed from a predominately white male visage to that of a population that was nearly 42 percent female<sup>34</sup> and 12 percent minority group members in the academic year 1988–89.<sup>35</sup> The percentage of minority group members attending law school has been growing slowly since John Mercer Langston, the son of a white planter and a slave woman who was half black and half Indian, was admitted to Oberlin, one of only four American colleges open to blacks, in 1849.<sup>36</sup> Langston became the first Dean of Howard Law School, which opened its doors in 1868. By 1890, national census figures showed a total of 431 black lawyers in practice, a total that had risen to 728 in 1900.<sup>37</sup>

Ada Kepley was the first woman to receive a law degree; she achieved that distinction in 1870 from Union College of Law in Illinois (now Northwestern).<sup>38</sup> The national census counted 5 women lawyers in the country in 1870; 75 in 1880; and 1010 in 1900.<sup>39</sup> Clara Shortridge Foltz may have been counted as one of the seventy-five women lawyers in 1880.<sup>40</sup> Her entry into the legal profession in California was an arduous one. First, she drafted a bill allowing women to practice law, and helped persuade the California legislature to enact it in 1878.<sup>41</sup> In the same year, she became that State's first woman lawyer by passing the bar examination.<sup>42</sup> Only then did she seek to enter law school at Hastings College of the Law.<sup>43</sup> Rejected because of her sex, she sued Hastings for admission in 1879, arguing her case before the California Supreme Court.<sup>44</sup> She won, but by then mounting bills had made the academic study of law an impossible luxury; she never attained a law degree.<sup>45</sup>

---

34. ABA Section of Legal Education and Admissions to the Bar, *A Review of Legal Education in the United States Fall 1988*, at 66 (1989) [hereinafter *Review*].

35. *Id.* at 68.

36. R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 81 (1983).

37. *Id.* at 81–82.

38. *Id.* at 82.

39. *Id.* at 83.

40. See Babcock, *Clara Shortridge Foltz: "First Woman,"* 30 ARIZ. L. REV. 673 (1988).

41. *Id.* at 685–86.

42. *Id.* at 697.

43. *Id.* at 699.

44. *Id.* at 714–15.

45. *Id.*

As might be expected, the proportion of lawyers who are women or members of minority groups has increased substantially since 1900. Women comprise approximately 20 percent of the profession,<sup>46</sup> while Blacks are about 2 percent and Hispanics roughly 1.9 percent of the profession.<sup>47</sup> The increase in the number of women in law school has been the most dramatic admissions story of modern times. Between 1965 and 1985 the percentage of women enrolled in the J.D. programs compared to the total J.D. enrollment at the 175 ABA-accredited law schools rose from 4 percent to 40 percent.<sup>48</sup> At many law schools today, women are approaching or exceeding one-half of the entering class. Those numbers will take some time to make themselves felt in the legal profession, of course, but it seems clear that the image of the American lawyer as overwhelmingly white and male is inexorably changing.

It is distressing, however, to have to report that the rapid increase of women and minority law students is not yet fully reflected in the composition of law faculties. Richard Chused concluded last year that, although "[i]n general, law school faculties were somewhat more integrated, both by race and by gender, in the 1986-87 academic year than they were in the 1980-81 academic year, . . . [s]ignificant problems lurk behind these general trends."<sup>49</sup> He thus summarizes his data:

[M]inority professors in general, and black professors in particular, tend to be tokens if they are present at all; . . . very few majority-run schools have significant numbers of minority teachers; and . . . minority teachers leave their schools at higher rates than do their white colleagues. . . . Women are entering law school teaching in non-tenure contract positions to teach legal writing at very high rates, about a fifth of the reporting schools are not moving at an appropriate pace to add women to their regular teaching staffs, slightly under two-fifths of the "high prestige" institutions are significantly behind the national pace in adding women to their faculties, and some schools are denying tenure to women at disproportionate rates.<sup>50</sup>

---

46. See U.S. Dept. of Labor, Bureau of Labor Statistics, unpublished tabulation from the Current Population Survey, 1988 Annual Averages (available in Georgia State University College of Law Library).

47. *Id.*

48. See *Review*, *supra* note 34, at 66.

49. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 538 (1988).

50. *Id.* at 539.

This unsatisfactory record has not gone unchallenged. The Association of American Law Schools (AALS) has established sections on Women in Legal Education and Minority Groups in Legal Education. Both sections have actively sponsored professional development workshops and networking conferences for women and minority law professors. Women of color are active in both sections. In addition, the AALS has a standing Committee on Recruitment and Retention of Minority Law Professors. That committee, currently chaired by Professor Robert Belton of Vanderbilt, is working on identifying concrete methods to help law schools find, hire, retain, and promote minority law teachers. I have appointed a Special Committee on Tenure and the Tenuring Process, under the able leadership of Professor Victor Rosenblum of Northwestern. That committee will help law schools establish appropriate standards and fair procedures to use in making sound academic judgments concerning our junior colleagues.

Law school administrators, as well, are increasingly counting women and minority deans among their numbers. Dean Marjorie Fine Knowles is one of twelve women deans holding office this fall in an ABA-accredited law school.<sup>51</sup> Only one, Dean Marilyn Yarbrough of Tennessee, is black.

### *B. Trends in Law School Curricula*

The demographic shift in the composition of law schools is already making itself felt in many other areas of legal education. The law school curriculum early on reflected the interests of the new students. In many schools, the traditional fare of contracts, torts, commercial law, evidence, and tax is being supplemented by new courses, including Women and the Law, Sex-Based Discrimination, Racism in American Law, and Gay and Lesbian Legal Issues.

The appearance of these courses has been accompanied by a change in the direction of legal scholarship. The popular media proclaimed the emergence of Critical Legal Studies at schools

---

51. The women deans are: Barbara Aldave at St. Mary's; Jacqueline Allee at St. Thomas; Judith Areen at Georgetown; Barbara Black at Columbia; Mary Doyle at Miami; Pamela Gann at Duke; Marjorie Fine Knowles at Georgia State; Barbara Lewis at Louisville; Susan Prager at U.C.L.A.; Kristine Strachan at San Diego; Judith Wegner at North Carolina; and Marilyn Yarbrough at Tennessee. Telephone interview with Dean Betsy Levin, Executive Director of the AALS (Sept. 25, 1989).

like Harvard and Stanford several years ago. Feminist jurisprudence made a more modest, but more promising, entrance into the literature somewhat later. Professor Christine Littleton and I have described the conditions that made feminist jurisprudence possible.<sup>52</sup> These conditions arose

[w]hen women began entering the law schools in large numbers in the late 1960s. The presence of these women, and the questions they asked posed significant challenges to formerly all- or predominantly-male bastions.

In particular, female law students asked why the curriculum was so silent on issues that mattered deeply to them as women—unequal pay and job opportunities; rape and sexual assault; battering of wives; reproduction. The women themselves organized to “fill in” the gaps in their legal education, forming the National Conference on Women and the Law, now in its [20th] year. . . .

As these women became lawyers, and especially law professors, they began writing about their concrete experiences as women in, around, and with the law. The subjects they chose arose from their own interests in particular areas of law, and from their unique methodology of acquiring knowledge. This method was rooted in the consciousness-raising groups that provided the grass-roots base of the second wave of feminism, the modern women’s movement. It is a process of identifying, of naming, women’s concrete experience. Taking women’s experience seriously, indeed even listening to women at all, was a radical act then, and remains an unfortunately uncommon enterprise in law schools today. Feminist legal scholars and lawyers began using the fruits of this process to build legal theory and to inform litigation strategies.<sup>53</sup>

Still more recently, a distinct minority voice is making itself heard in American law schools. It tells the story of American law and American institutions from the several perspectives of scholars of color—Blacks, Hispanics, Asians, and American Indians. The AALS Workshop on Minority Law Professors: Emerging Voices, held in Washington in September 1989, was an historic occasion. Nearly 130 law professors came together for a weekend

---

52. See Kay & Littleton, *Text Note: Feminist Jurisprudence: What Is It? When Did It Start? Who Does It?*, in H.H. KAY, TEXT, CASES AND MATERIALS ON SEX-BASED DISCRIMINATION 884 (3d ed. 1988).

53. *Id.* at 884–85.

of debate, discussion, and teaching demonstrations. There was time for remembering and learning from early minority teachers, such as Professor James Jones of Wisconsin, as well as time for hearing young scholars present their work. The Workshop was an empowering experience, one that bodes well for the future success of minority scholars in legal education.

A ferment is in the air, one that will surely enliven legal education and bring it more centrally within the academic enterprise. Much of the new scholarship that I have described draws explicitly on interdisciplinary sources. The law journals today bristle with references to concepts developed by philosophers, literary critics, economists, historians, political scientists, sociologists, psychologists, even biologists and mathematicians. The law schools, in opening their doors to new students and scholars, have also opened their windows to new ideas.

### III. OBLIGATIONS TO THE LEGAL PROFESSION

We know as lawyers, however, that every story has two sides. Even as some welcome the prospect of bringing legal education into the mainstream of interdisciplinary thought in the university, others fear that the law schools are forgetting their obligations to the legal profession. Once again, Judge Harry T. Edwards has served as a trenchant critic. In his speech to the AALS Annual Meeting in 1988, he reminded the representatives of legal education of our dual mission to the academy and the practicing bar.<sup>54</sup> Charging that "too many members of the law school community are either indifferent to or hopelessly naive about the problems of legal practice," Judge Edwards warned "today we face major structural problems that threaten to alter the basic fabric of legal systems. As a consequence, we can no longer afford law schools isolated in a world of their own."<sup>55</sup> The major structural problems that Judge Edwards identified include the caseload burden that exists at all levels of the court system;<sup>56</sup> the rising expense and length of litigation;<sup>57</sup> the extraordinary

---

54. See Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285 (1988).

55. *Id.*

56. *Id.* at 286.

57. *Id.* at 287.

growth of law firms;<sup>58</sup> the decline in the public-interest bar and the shrinkage of government-financed legal services programs;<sup>59</sup> and the deterioration in the administration of justice reflected in frivolous case filings, and substandard, sometimes even fabricated, legal research.<sup>60</sup>

Judge Edwards placed the major responsibility for dealing with these problems upon the law schools. Pointedly addressing the direction of scholarly research and publication, he said:

The gap between the academy and the profession seems to be growing. Law professors seem more and more often content to talk only to each other—or perhaps to a few colleagues in other academic disciplines—rather than deal with the problems facing the profession. Basic research with no immediate practical application is crucial to the existence of any great academic institution, but not at the expense of professional concerns.<sup>61</sup>

Judge Edwards was a law professor before he ascended to the bench. He did not, therefore, propose that law schools be required to alter their curriculum or change the content of their scholarly writing in order to meet his criticism. Rather, he contented himself with exhorting his former colleagues to live up to their obligations to the legal profession as well as to the academy.

#### A. *Proposals to Improve Lawyer Competency*

Other critics, however, are not loath to recommend coercion if persuasion fails. Earlier this year, the Consortium on Competence appointed in 1985 by the Board of Governors of the State Bar of California released a series of proposals for public comment. The proposals were designed to improve the competency of California lawyers. Procedurally, the proposals would be implemented by requiring that applicants for the California bar examination show that they had undertaken specific kinds of training. Although these proposals were limited to California lawyers, they cannot be limited to California law schools. California has more lawyers admitted to practice than any other state. Graduates of law schools from across the country come to California to practice

---

58. *Id.* at 288 (noting that Baker & McKenzie had passed the 1000 mark in number of lawyers).

59. *Id.* at 289.

60. *Id.* at 289–90.

61. *Id.* at 291.

law. If adopted, these proposals would thus have a national impact on legal education.

What are these proposals? Thirteen were released for public comment, but I will mention only those most directly relevant to legal education. Proposal One would require applicants to show that they had specific training in lawyering skills and practice experience. This Proposal has three parts, which might be adopted together or separately: (1) a required collection of courses in lawyering skills, totalling at least 90 hours of instruction; (2) a required practical training internship of 600 consecutive hours spread over one semester or two quarters as an adjunct to classroom courses; and (3) a postadmission apprenticeship of two years during which time new admittees would receive a restricted license to practice law only in the context of a certified residence program. Qualifying programs might be developed by private firms, public agencies, individual practitioners, or public clinics sponsored by law schools.

Proposal Two sought to increase law student exposure to practitioners, on the assumption that competent lawyering involves the conversion of substantive legal knowledge into a product that can be used to solve the client's legal needs in an economical way. The Consortium believed that professors who have practiced law are better equipped to help students acquire that skill. It considered, but did not recommend, a proposal that all law faculty candidates be required to have experience in practice as a condition of employment. Instead, it recommended the hiring of adjunct faculty, the use of practitioners and judges as visiting lecturers, and the revision of sabbatical leave and tenure policies to encourage law professors to spend time in practice.

Proposal Three would create a Law Student Section of the State Bar that would enable the practicing bar to encourage law students to develop lawyering skills and to see legal education in the context of legal practice. This goal would be attained through enabling law students to participate in on-site training and education programs.

Proposal Six recommends that the Board of Governors take steps to ensure that preventive law courses be added to the law school curriculum. "Preventive law" in this proposal refers to nonadversarial counseling; negotiation that looks toward agreements; drafting designed to anticipate and prevent legal problems from arising; and special techniques such as legal check-ups, self-evaluations, and legal audits designed to help individual



clients and business entities detect and solve latent legal problems.

Finally, Proposal Thirteen recommends that the Board of Governors adopt a policy requiring persons seeking admission to law school demonstrate proficiency in basic oral and written communication skills as a prerequisite to admission. The Consortium did not specify a particular language, but most observers think they meant for the communication skills to be expressed in English. The Consortium asked that this proposal be referred to several groups for further study and implementation, including the AALS and the Special Project on Minority Pass Rates.

These proposals remain under consideration. The Consortium received a great deal of public comment at two public hearings held in June 1989. Much of the comment from legal educators was in opposition to the proposals. A statement signed by the deans of six Los Angeles law schools expressed surprise and disappointment that public comment would be sought "on a set of proposals that appear to be so inadequately researched and that are so incompletely presented."<sup>62</sup> The deans noted that the Consortium had failed to present any evidence that lawyer competence was a problem among entry-level lawyers, and the deans further pointed out that the Consortium's view that students enter law school without basic communication skills is simply an assertion.<sup>63</sup> The Los Angeles deans believed that the Consortium had ignored the significant new costs their proposals would impose on law students as well as on the state budget for public law schools.<sup>64</sup> Moreover, they pointed out that the Consortium had failed to take account of the fact that several states that had tried apprenticeship programs had concluded that such programs are ineffective and should be phased out.<sup>65</sup> The deans of eight Northern California law schools, in a letter to President Colin Wied of the State Bar of California, expressed agreement with the statement of the Los Angeles deans, and called for the creation of "a joint task force on Lawyering Skills, consisting of representatives of the State Bar and the law schools, with the objective of answering these questions and establishing standards

---

62. Statement of the Deans of ABA Approved and AALS Member Law Schools in Los Angeles (June 8, 1989) (available in Georgia State University College of Law Library).

63. *Id.*

64. *Id.*

65. *Id.*

for lawyering skills competence."<sup>66</sup> Whether such a joint task force will be appointed is unknown at this time.

The President-Elect of the AALS, Professor Tom Morgan, presented testimony on behalf of the AALS, commenting on the proposals.<sup>67</sup> His testimony elaborated five basic propositions:

I. While there is always room for improvement in legal education, the present basic curricular approaches have evolved, not as alternatives to producing competent lawyers, but as the most effective way to do so.<sup>68</sup>

....

II. A great deal of work is already being done at the nation's law schools to improve students' lawyering skills.<sup>69</sup>

....

III. Lawyer competence is not a one-dimensional concept, nor is it the product of training alone. In addition to legal knowledge, competence requires a lawyer to have judgment born of experience and to attend diligently to each case.<sup>70</sup>

....

IV. No individual lawyer can be highly skilled today in doing more than a small part of what lawyers regularly do.<sup>71</sup>

....

V. Every proposal for mandatory instruction in law school must be at the expense of other important law school instruction.<sup>72</sup>

President-Elect Morgan concluded his testimony on behalf of the AALS by urging the California State Bar to continue its dialogue with law schools about improving legal education, but not to take the next step of "indirectly regulating law school programs by requirements for admission to the bar."<sup>73</sup> He warned that "[u]ltimately, you will succeed only in making legal education *less* effective and the products of that education less competent."<sup>74</sup>

---

66. Letter from Dean Paul Brest of Stanford Law School to President Colin Wied (June 13, 1989) (available in Georgia State University College of Law Library).

67. Testimony of the Association of American Law Schools Before the State Bar of California, Office of Professional Standards, presented by Professor Thomas D. Morgan, President-Elect, San Francisco, California (June 26, 1989) (available in Georgia State University College of Law Library).

68. *Id.* at 4.

69. *Id.* at 7.

70. *Id.* at 10.

71. *Id.* at 13.

72. *Id.* at 16.

73. *Id.* at 19.

74. *Id.*

The Consortium's proposals, if adopted, would have required law schools to change their approach to legal education in very basic ways. In reflecting on why the Consortium might have been so concerned about the adequacy of law school training, one point appears significant. The ABA and the AALS are charged with the function of accrediting and monitoring law schools. There are 175 ABA-approved United States law schools. In addition, there are forty-five United States law schools that are not approved by the ABA. Thirty-five of those unapproved schools are in California.<sup>75</sup> Obviously, the quality of legal education offered in the unapproved schools varies widely. It seems, however, that the California State Bar may well believe that it has a unique problem of quality control in legal education.

*B. Technical Training in a Learned Profession*

The leadership of the ABA is also concerned about lawyer training. But the avenues that it is exploring to narrow the gap it perceives to exist between the law schools and the profession are less drastic than some of the proposals explored above. Thus, former ABA President Robert D. Raven, in his address to the AALS in January 1988, stated that his concern is not about beginning lawyers who go to large or middle size law firms, for those firms are able to install formal in-house training programs or send their new lawyers to National Institute of Trial Advocacy programs or to similar groups offering training. Instead, the focus of his concern is upon "the majority of beginning lawyers who go into solo practice or to small firms that cannot furnish formal training programs."<sup>76</sup> President Raven went on to acknowledge "the problems of providing certain skills training in law school," adding that "[m]uch of such training is labor intensive and thus costly, and much is outside the expertise of the faculty."<sup>77</sup> He then proposed that a specific plan of action be developed with the cooperation of the AALS, American Law Institute-American Bar Association (ALI-ABA), the ABA section on Legal Education, and other interested parties.<sup>78</sup> Subsequently, the ABA Section on Legal Education and Admissions to the Bar created a National

---

75. *Review, supra* note 34, at 63-64.

76. Raven, *Welcoming Remarks*, AALS Annual Meeting, New Orleans, Louisiana (Jan. 6, 1988) (available in Georgia State University College of Law Library).

77. *Id.* at 3-4.

78. *Id.* at 4.

Task Force on Law Schools and the Profession: Narrowing the Gap. The task force is chaired by former ABA President Robert MacCrate. The task force expects to spend two years studying the situation before making proposals. Dean Betsy Levin, the AALS Executive Director, serves as liaison to the task force from the AALS.

Those of us in legal education would do well to heed these voices demanding change in our approach to training lawyers. At the same time, of course, we cannot permit legal education to become a place where the pressing need for technical training crowds out the equally pressing need for preparing our students to join a learned profession that has traditionally played an important social and political role in American society. Lawyers today must be able to give their clients high quality legal services, but they must also be able to provide those clients with the benefit of their professional judgment. The traditional concern of legal scholars for clear thinking and doctrinal rigor continues to be necessary in a society that increasingly lacks consensus about basic values. Those scholars must train their students to raise the always unpopular questions about what justice means and how it is to be achieved.

#### CONCLUSION

Fundamental questions of justice arise in different guises at different times. Today it may be particularly important that the procedural safeguards we know and respect as due process and fair notice be maintained at a time when the justifiable public concern over large-scale criminal enterprise, including the drug trade, threatens to engulf our very way of life. As we move to enforce justice, we must remember that our ideal of justice guarantees adequate legal representation before an impartial judge to all persons accused of wrongdoing. At the same time, however, we must insist that lawyers keep in mind their professional obligation to distinguish between the public good and their client's interests.

Legal education has become strengthened and revitalized during the past twenty-five years by an infusion of new talent, with new ideas and new methods. We must be sufficiently adaptable to meet the challenge posed by thoughtful critics, in the organized bar and elsewhere, who are concerned about our role in safeguarding legal ethics and professional responsibility in a period when lawyers may be tempted by the relentless pressure

of producing billable hours to limit their vision of a just society governed by the rule of law to the narrow scope of their client's interests. Only those of us in the academy have the freedom, and the responsibility, to insist that the public good be given priority over private gain. We must continue to impart those basic professional values to our students at the same time that we teach them to think like lawyers.