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Preparation of Lawyers In England and the United States: A Comparative Glimpse

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American lawyers and judges frequently cast admiring glances across the Atlantic when bemoaning one or another of our current problems: concerns, on the one hand, that the United States lawyers are not sufficiently competent, public-spirited, or civil; or that, on the other hand, they are unduly aggressive, litigious and commercial in orientation. Invariably the contrast is drawn to the English barrister, who is portrayed in wig and gown presenting his cause with great skill, elegance, wit, and circumspection before adjourning for a companionable meal at one of the Inns of Court. The implicit (and sometimes explicit) message is: why can't we do it the same way?

A full-scale comparison of the functions, behavior and ideology of English and American lawyers would be an undertaking beyond the scope of this short comment. It would require an intensive exploration of such matters as the vast difference in the size and homogeneity of the English and American professions (some 30,000 English lawyers, generally drawn from the same social background and heavily concentrated in London, as contrasted with some 650,000 geographically and socially diverse American lawyers); the different roles of lawyers in the two societies (American lawyers participate in a broader range of business and social affairs, practice in more diverse contexts, and utilize a wider range of skills); and many similar matters. Here I plan only to sketch some of the fundamental differences in preparation for the profession: the methods used to insure that lawyers are competent and to protect clients if they are not. The English model is quite different from our own in this as well as other respects.

In making this comparison, the American lawyer is contrasted to the English solicitor, not to the English barrister. Simplicity of presen-

tation urges this course, but, in addition, it is more consistent with the bulk of lawyering activities. Most lawyering in the United States and England involves giving advice and counsel to clients rather than courtroom advocacy. In addition, competence problems are primarily of concern as they relate to clients. In England, only solicitors deal directly with clients; barristers deal with them indirectly through solicitors.

The current American system of training lawyers is very recent. It emerged less than one hundred years ago, developed slowing during the first half of this century, and became the sole gateway to the profession only after World War II. It is a very recent social innovation. Although recent in origin, we take it for granted because we went through it — it is how we prepared for a legal career.

Consider the basic elements of the current system: A high school graduate of age 18 wants to become a lawyer in the United States. The first step is a college degree which is acquired four years later at age 22, followed by three years of study at one of the 174 ABA-approved law schools, resulting in the J.D. degree at age 25. (My example assumes a person who does not delay college or undertake other activities before law school, as do perhaps one-fourth of current law students.) After a few weeks of study in a commercial bar review course, the law graduate takes a state bar examination, usually including the multistate bar examination as an important component. At age 25, after completing successfully the bar admission process, including the character and fitness inquiry, he or she is legally entitled to undertake virtually any legal matter for any client. The educational requirements, seven years of higher education in all, have filtered out those who lack intellectual prowess and academic staying power, as well as those who are unwilling to invest or to borrow the large amounts required to finance this extended period of study.

The selection for law school, at least during the last 25 years, has been so competitive that it has insured that American lawyers, in terms of academic credentials and basic intelligence, are drawn from at least the top one-half, and a very large portion from the top one-fourth, of United States college graduates. Knowledge of the basic rudiments of law and cognitive ability in manipulating legal doctrine are insured by legal education and by the bar examination as presently constituted.

In short, the new entrants are generally smart and have acquired some basic knowledge of legal institutions and doctrine along with some basic training in legal reasoning. They know very little — some might say nothing, — however, about the day-to-day practice of law, except as special experience in clinical courses, part-time work during

law school, or summer clerkships have conveyed such knowledge or understanding. They learn the vocational aspects of lawyering on the job after admission. The American rule, one might say, is: "Client, beware! Your new lawyer is smart, facile, inexperienced, ambitious, and eager for the higher standard of living that has been postponed during the long period of academic preparation. Engage him or her at your own risk." We don't tell prospective clients that, of course, but that is the American rule.

Most clients, given a choice, will not entrust their affairs to inexperienced lawyers; and a growing fraction of newly-admitted lawyers begin practice in the employment of more experienced lawyers. That has always been the case, and the fraction entering employment under other lawyers is increasing over time. But nothing requires that this be the case; and a significant portion of new entrants, perhaps as many as one third, begin law practice on their own, without supervision by an experienced member of the bar.

Traditon of wigs & gowns in training lawyers

Professional discipline and malpractice liability are the principal institutional measures that seek to protect American clients from careless or irresponsible lawyers. As a practical matter, both flow from client initiative and complaint. Very few disciplinary proceedings are brought in the absence of a client complaint; and malpractice actions are always brought by aggrieved clients. For a substantial portion of American lawyers, perhaps as high as fifty percent, the malpractice remedy may be totally illusory because there is generally no require-

ment in the United States that lawyers carry malpractice insurance. A very large proportion of lawyers, and especially those who have limited personal resources that could pay a malpractice award, do not purchase malpractice coverage.

The English model differs in substantial respects. First, the period of required academic preparation in England is much shorter, three years rather than seven. Second, although the total length of the preparation period is about the same — seven in the United States, six in England — half of the six years in England (a total of three years) must be spent in practical study or in acquiring experience under supervision. After three years of academic preparation, a prospective solicitor must devote one year to vocational study in a program run by the Law Society, followed by two years of articling as a clerk to a solicitor. Third, even after this initial preparation and tutelage, the new entrant is not free to practice alone. For three additional years the new solicitor must work for an experienced solicitor. During this same period, attendance at certain CLE courses is required. Fourth, even after full qualification, which would normally come at age 27 in England for the student who has passed his "A examination" at age 18, additional protections are provided to clients. Malpractice insurance is compulsory and annual relicensing requires an accountant's certificate that client funds have been properly handled.

The English model, it is clear, puts less emphasis on academic preparation and more on apprenticeship, is much more under the control of practicing lawyers, and involves more continuing regulation of the profession. Whether these differences make a difference in terms of lawyer performance for clients, or the cost of legal services, I cannot say. Perhaps both work well in cultural milieus that are more different than our common use of the English language may sometimes lead us to believe.