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Two Views of the Question: Are Law Schools Doing Their Job?

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Two Views of the Question: Are Law Schools Doing Their Job?

Remarks of Robert B. McKay*

Thank you, Peter. Good morning, ladies and gentlemen, friends.

You have all heard the criticisms of lawyers, which I need not rehearse to this audience. Critics range from Aristotle, Jesus, Shakespeare, and Samuel Johnson to Jimmy Carter and Derek Bok; the cast of characters goes on and on. The criticism I like best, although in a way it is the most cutting of all, is what Samuel Johnson is alleged to have said about two centuries ago: "I do not like to speak ill of any man behind his back but I do believe he is a lawyer."

It is always easy to bring people together, nonlawyers at least, to talk about the sins of the legal profession, and lawyers will be glad to join in talking about the sins of legal education. The latter is our topic today, not necessarily the sins but the strengths and weaknesses as they may have developed over the past 20, 30, 50, or 100 years. It is ordinarily difficult to gather a group to talk about legal education as such. Even law faculties are not eager to talk about the premises of legal education and whether we are succeeding or failing in what we seek to do. They are always quick to talk about whether classes should begin in August or September, whether contracts should be four or five or six hours, and important matters of that character; but when you come right down to the guts of it, what it is we are all about, the reluctance becomes apparent. What is the purpose, what is the objective of legal education, and are we succeeding or failing? That is a much more difficult and much more tender subject that we tend to shy away from. So I congratulate the planners of this conference on having the courage at least to ask us to address that question and to persuade this many of you to come out and talk about it on what is obviously a promising Friday in the fall.

The origins of legal education in the United States were very humble, and the ambitions were exceedingly modest. Before the Revolution there were no law schools in the United States. Gentlemen of the day (but no gentleladies) who got any education at all other than apprenticeship got it in the Mother Country. The first professorship of law was at William & Mary College when Thomas Jefferson appointed George Wythe to that post. There followed

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other appointments at Harvard, Yale, Columbia, and the University of Maryland; but a single professorship does not a law school make. The first real law school, of sorts anyway, was that at Litchfield, Connecticut, which had a curriculum that was surprisingly modern, at least in terms of the names of the courses offered—property, contracts, torts, agency, commercial law. But it was a proprietary school, and although its thousand-plus alumni over a period of years became very distinguished in the early American bar—Vice President of the United States, Supreme Court justices, leaders of the bar—it was destined not to succeed; it gave way to university law schools, including one at nearby Yale University.

Law schools scarcely survived the Civil War and the rigors of that period; it was not until late in the nineteenth century that there were any law schools of really substantial merit that we would consider at all modern by present standards. There was, of course, the development of the case method, commonly attributed to Christopher Columbus Langdell at Harvard in 1890; from that time, roughly, the modern period of legal education begins. But even until well into the twentieth century the principal route to practice was the apprenticeship method, which you in New Jersey know full well from the experience many of you have had with it. It was not until the 1920's and later that the developments in legal education we are going to talk about today became the standard fare even in the best law schools.

Thus legal education in the United States is a relatively young discipline. For instance, when I started law school at the University of Kansas in 1940, the curriculum did not sound very different from the Litchfield curriculum of 150 years earlier. And the teaching method was not very different from what it had been at Harvard in 1890 when the case method was first established. Even when I began teaching in 1950 there was not that remarkable a change in legal education throughout the country. That is not to say that it was not well done, but the system was considered tested and sound. Vast changes have occurred since that time.

Let me talk first about the demography of legal education. And when I talk about law schools, I will be talking principally about the 174 that have been accredited by the American Bar Association. The number of law schools has increased from the time I entered teaching in 1950—from 112 to 174, which is more than a fifty percent increase. Even more striking is the number of law students. The low year for enrollment after the post-World War II surge was 1953, when the number of students in law schools was just over 30,000. That has increased to more than 120,000 at the present time. There has been a small dip in the fall of 1984 entering class, a matter to which I shall return.

Until the late 1960's and early 1970's, the rapid surge in enrollment was almost entirely from white males. Since then the number and proportion of white males has declined each year. In 1983-84, the last year for which we have figures, 37.7% of all J.D. candidates in law schools approved by the American Bar Association were women, and nearly ten percent were minorities, with obviously some overlap between those two figures. In a number of law schools, a majority of all the students are women while the number of minorities varies quite substantially from school to school.

Accordingly, it is not surprising that the size of the bar has increased dramatically in recent decades, to the concern of many lawyers. There are now nearly 700,000 lawyers eligible to practice in the United States. In 1982 there were more than 45,000 new admissions to law practice. Although that may include a few who previously had been admitted to another bar, it is unquestionably a substantial increase from previous years. The bar is young now. Well over half of all present members have been admitted within the last ten or fifteen years. So, the character of the bar has changed dramatically. Most who are now admitted to practice have come from the recent period of legal education that I will call the modern, or some might call the post-modern, era.

The increased numbers raise the question of whether there are too many lawyers, a frequent subject in bar association discussions. I find that those already admitted to practice and current law students who believe they will be admitted within the next two or three years are all inclined to think that there are too many lawyers and that the time has come to reduce the flow in some way, either as to the number of law schools, the number of students admitted, the number of students allowed to graduate, or the number passed into the bar.

Just coincidentally, and I attribute no special significance to it, the number of lawyers has risen at almost exactly the same rate as the increase in the number of inmates in prisons and jails in the United States. I would not mention that too freely in a nonlawyer audience because some conclusions might be drawn that I hope are not appropriate.

There has been growth in every department of the law schools. When I first taught at Emory Law School in Atlanta in 1950, I thought it was a great law school, although a small law school, with an entering class of about thirty students in the day, about the same number in the evening, and a library of about 20,000 volumes. During the three years I was there, I did not get through even all of those works, but today Emory has nearly 200,000 volumes; a small law library now is considered to be one of only 150,000 volumes. So the law library, which is after all our laboratory, has

become a major part of the process and a major part of the cost. As you all know, the cost of books and serials has surged far ahead of the rate of inflation.

In the past decade alone, more than 100 law schools have moved into totally new facilities or into substantially renovated facilities. So the "edifice complex" is a significant factor on the law school scene. Nearly all law schools are housed well, I believe. And some of them have magnificent facilities.

Legal education in the United States is now big business. Tuition alone, at public and private law schools, was close to half a billion dollars in 1983-84. And by the time you add in the private contributions and public subsidies (law schools are not profit centers), I suspect the budgets of all the law schools realistically computed would be over a billion dollars a year. That is not an inconsiderable amount of money.

Law faculties have increased in numbers very substantially. In 1973, almost half of the approved law schools in the country had student-faculty ratios in excess of thirty-five to one. Ten years later, only three law schools had faculty ratios in excess of thirty-five to one. The average is something below thirty, which is the figure that the American Bar Association accreditation standards recommend. That means that the size of the law faculties has increased at least as fast as, and possibly faster than, the size of the student bodies which they serve, putting pressure on law schools to satisfy even the office space needs of all members of the faculty.

Statistically, I think it is quite easy to say that legal education is a success story, and you may be sure that legal educators ordinarily will report these figures to demonstrate how impressive their accomplishments have been. But there are emerging problems, some clouds on the horizon as well. Applications for law school admission declined in 1983 and 1984, and we know that there are some unfilled seats in some law schools around the country—primarily private law schools in the urban centers. Law schools with reduced populations are inclined to say, "Yes, we have a smaller first year class because we wanted it that way; we wanted to improve our student-faculty ratio." I like to believe that is in fact true.

It has become somewhat more difficult, but not yet, I think, strikingly more difficult, to place law school graduates. For at least some law schools, that is becoming, or soon may become, a serious problem. And finally, the increasing cost pressures on both public and private institutions may well force some economies on legal education of a kind we have not known during the last fifteen or twenty years, which have been the golden years for legal education in this country in terms of expanding faculties, increasing services to students, increasing loan funds, increasing law libraries, and enhanc-

ing all the things that at least in quantitative terms go to the measurement of quality in legal education.

More important, I think, than the changes in demography are the changes in the nature of the legal education process. It is my contention that there have been more changes in the way legal education is conducted in the last fifteen years than in the previous 150 or 200 years. For example, we have long talked about, and in the 1920's sometimes did something about, bringing some of the humanities, the social sciences, and interdisciplinary programs into the law school. We are now doing an increasing amount of that; probably it is still not enough, but increasing attention is given to joint degree programs, social science programs, and interdisciplinary programs both in the law school and in other university departments. Specialized topics receive increased attention and increased quality of instruction as faculties have more experience in what is sometimes called the real world. The curriculum is more luxurious now, in nearly all law schools, than it was even as little as two decades ago.

Law school publications have expanded in numbers and in pages. You are well aware I am sure of the now hundreds of legal periodicals that come out of the law schools around the country. Some schools have three, four, perhaps even five periodicals. It may be that the volume is so great that little is read, but that is not the entire point. Part of the point is that these are very effective tools for the teaching of research and legal writing. This is at least a partial answer to the frequent complaints about insufficient attention being given to writing skills. In addition, more effort is being spent upon teaching all students to write more effectively. At New York University, for example, we now have twelve writing instructors for the first-year program, and we treat seriously the question of the skills of composition and organization of legal thought.

Perhaps the most dramatic change has come in the field of skills training and advocacy. It has been welcomed with mixed enthusiasm around the country, but now it has become a standard fixture in almost all law schools: serious clinical training, much of it by live-client training, with much of the balance done by simulation. These are not show-and-tell programs; they offer practical experience in dealing with everything from negotiation to actual advocacy to the ethical problems of representing clients in criminal or civil cases.

The increased attention being given to professional responsibility training represents another important development in legal education. When most of us went to law school, if there was a legal ethics course or a legal profession course or a professional responsibility course, it was probably not selected by many students, and it may have been taught by a practitioner who used war stories to illustrate a lesson of "how you do it without quite violating the code of

professional responsibility," instead of "how you uplift the moral quality of the practice of law." For eleven or twelve years now, the American Bar Association standards have required that every law school offer to every law student a course in professional responsibility. It is now treated as a serious subject. I believe, at least I hope, that there is a quality of moral uplift in contemporary courses that was absent in the past.

Other changes include the emphasis upon affirmative action. About 1966 or 1967, New York University and other schools discovered that even though we prided ourselves on admitting students without regard to race, sex, or color, the result was that we were having one or two or three minority students in a class, at my school, of about 330 to 360. Obviously, that was not good enough for the profession and not good enough for the country. Since that time there has been affirmative action in virtually all schools in recruiting, in advertising the advantages of legal education to those who had not been served by the profession as a whole in the past, and in attempting to assure an opportunity for successful placement. For a time affirmative action seemed to be necessary as well for women, who also had been a very small proportion of the student body up until about that same time; but now about forty percent of all American law students are women.

The bureaucracy of legal education also has increased very substantially over time. There are three instruments of what I call the bureaucracy of legal education. The Association of American Law Schools (AALS), which is the intellectual arm of the legal education profession, at one time played a very active part in setting the standards for law school training, but does so now on a consultative basis to the American Bar Association's Section of Legal Education and Admissions to the Bar. The AALS largely confines itself now to matters having to do with the nature of the law school educational program, the training of law teachers, and the printing of materials about legal education in the *Journal of Legal Education* and elsewhere. The ABA Section of Legal Education and Admissions to the Bar has emerged as the dominant actor in the accreditation process, which is especially important because of the unique situation of the legal profession. Unlike every other profession, the legal profession has a monopoly on its professional process. It is what I call a cradle-to-grave monopoly. Admission to law school is determined by lawyers (law teachers). Graduation from law school is determined by the same collegial body. Admission to the bar is determined by lawyers as bar examiners and courts (sometimes with participation by the legislature, dominated in this respect by lawyers). Finally, discipline also is controlled by lawyers. Not even the health professions have as tight a control over the standards for admission to

practice and for continuing to practice. This puts upon the bar a heavy responsibility to assure quality in standards of admission, continuing education, discipline, and standards of lawyer competence. The American Bar Association's section is the officially recognized accreditation body for the law schools, which are the nearly exclusive vehicles for legal education in the United States. Recommendations from the section go to the ABA House of Delegates for final action. The section also arranges for all the accreditation procedures, including the visit to each school roughly every seven years, the inspection of new law schools, and the advice given to nonaccredited law schools as to what they need to do to become accredited. Perhaps the most important function is the setting of standards. What has happened over the last twenty years in particular is that the standards have been raised gradually so that it has become more difficult now to be an accredited law school than it was at any earlier period in terms of student-faculty ratios, quality of library, quality of physical facilities, nature of the relationship with the rest of the university (protections against financial exploitation by the central campus), affirmative action, professional responsibility, clinical training, and, most recently, the use of some kind of tenure-like standard for clinical teachers.

All these things have come through the ABA section. Obviously, there is some law school resistance from time to time. Some schools ask why they should be regulated by the eighteen-member section and the ABA House of Delegates. Moreover, they ask why they should be subjected to periodic inspections that are undoubtedly burdensome. The answer, I believe, is that the quality of legal education has been increased substantially by virtue of this insistence upon heightened standards, all undertaken during a period of prosperity for legal education when it was possible to make advances. So we now have stronger student bodies, better qualified faculties, vastly improved libraries, and superior physical facilities. If the quality of legal education has not improved as a result, then we have only individual faculties to blame. Maintenance of standards is reinforced, of course, by requirements in nearly all states making it impossible to take the bar examination without graduation from a law school approved by the American Bar Association. What that has meant in addition is that the number of unapproved schools has diminished sharply over the years. Only a small minority of students graduate from such schools now as compared with a much larger number twenty years ago. The result has been a bootstrap sort of lifting of the quality of legal education and a reduction in the number of schools that do not meet what we believe to be the desirable standards.

Now I come finally and briefly to the purposes of legal education

and where we are. I think perhaps you understand my basic thesis from what I have said already, but let me summarize my overall position on the obligation of individual law schools and the collective responsibility of legal education, which I think is somewhat different and somewhat larger. First, individual law schools still have an obligation to train our graduates to "think like lawyers." Now I have often objected to that expression because it is a very circular statement, but it is a kind of a code expression that we all understand contemplates quality of reasoning, fact analysis, and problem identification and solution, especially where the question is unfamiliar.

Second, our graduates must be trained for competence. That is, our graduates must be able to write, to think, and to understand the research tools of the law, including now, in most law schools, the new computerized technologies. This has to do with the complaints that have been advanced by Chief Justice Burger, Judge Kaufman, and others that lawyers in litigation at least are substantially incompetent. You will recall the response of the bar, saying, "It's not fifty percent as you said, Mr. Chief Justice; it's really only about twenty percent who are incompetent." Obviously, that is an unsatisfactory answer to a serious charge.

Third, we have an obligation to instill in each of our graduates a sense of moral responsibility, an obligation to clients, to the profession, to the courts, and to the public as a whole. This may be difficult to do because our students come to us as mature individuals whose moral sensibilities are shaped already. But I am satisfied that we can at least reinforce existing value systems and try to discourage the more cynical attitudes that sometimes come with the study of law.

Fourth, each law school also has an obligation for research and law reform within its particular jurisdiction—community, state, region, or nation—through the work of the faculty, work of the students in cooperation with the faculty, through its periodicals, through work with bar associations, through work with law reform commissions, and through work with legislative bodies. Law faculties and their students are an important resource for betterment of the law.

The collective responsibilities of legal education are ones that I already have suggested. Let me enumerate them briefly again. Through the accreditation process, the standards for legal education must be maintained at a level that will ensure that each law school admits and graduates only those students who are qualified in terms of competence, professional responsibility, and analytic skills for the effective and honorable practice of law.

How well are we doing? Law firms remain somewhat critical of legal education and the performance of recent graduates; but I note

that law firms come to the law schools in increasing numbers to buy—and I use the word advisedly—our graduates with offers of high pay in a great many instances and with attractive opportunities for summer employment among other things. The competition sometimes seems almost obscene in the pricing and the entertainment that is offered to at least the strongest law students.

Legal education is far from perfect. Harvard's president, Derek Bok, in his 1982 Report to the Harvard Board of Overseers, identified a number of the issues and alleged deficiencies of legal education and of the legal profession as a whole. The reaction of educators and lawyers in general has been somewhat defensive. But when the system is charged with excessive cost and delay, and when we are reminded that the adversary system carries burdens as well as benefits, I suggest that we must consider those points seriously. We must be ever alert for ways to improve the quality of justice of which the law is the chief custodian.

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Remarks of Terrance Sandalow*

The question you have been convened to consider, whether law schools are doing their job, cannot be answered without addressing a prior question: What is the job of law schools? It is the prior question that I propose to consider, not the question how well the schools are doing. It may be useful to state briefly my reasons for avoiding the latter question.

Despite the confident assertions that we have grown accustomed to hearing, I doubt that anyone knows enough to assess the performance of all law schools. I am certain that I do not. There are, at present, approximately 175 accredited law schools in the United States. They graduate more than 35,000 students each year. The range of schools is very great, from national law schools whose names are familiar to all to little-known schools that have a very precarious existence. Although all are engaged in educating prospective lawyers, their circumstances and their missions vary widely. They differ markedly in financial resources, in the characteristics of their student bodies, and in the programs of instruction that they offer. Their graduates follow very different career paths. Nearly all graduates of the national law schools, for example, enter the profession in practice situations in which they work under the supervision

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of senior lawyers who provide training beyond that offered in law schools. The largest number of graduates of many other schools begin their careers as solo practitioners or in other practice settings in which additional training is more difficult to acquire. At still other schools, substantial numbers of graduates enter both types of practice. Different schools, it seems plausible to suppose, do more or less well in equipping students for one or another of these practice settings.

The variety of professional tasks that lawyers are called upon to perform adds another dimension that would have to be examined if the performance of law schools were to be assessed, tasks that range from routine real estate closings to the trial of extraordinarily complex antitrust cases, from legislative drafting to the processing of criminal cases in overcrowded urban courts, from tax counseling for multi-billion dollar corporations to litigating the intimate issues that arise in domestic relations cases. There is little reason to suppose that law schools do equally well in preparing students for each of these and for the myriad other responsibilities that lawyers undertake in the United States. The picture is further complicated by the variousness of positions that even a single lawyer may occupy over the course of a career, positions in governmental, commercial, industrial, financial, and educational institutions as well as in varying practice settings involving innumerable legal specialties. An assessment of how well the schools are doing surely would require a judgment about the extent to which their programs contribute to or retard the professional mobility of their graduates.

In the face of this diversity among the law schools and in the careers of their graduates, generalizations about how well the schools are doing their jobs are less likely to be solidly grounded in reality than to reveal the limited perspectives and biases of the speaker. We must consider also that we lack reliable information about many, perhaps most, of the relevant particulars. An answer to the question would, for example, depend at least partly upon an assessment of how well judges and lawyers are discharging their responsibilities. It hardly need be said that we lack adequate information for such an assessment. We also lack adequate means of estimating the extent to which the strengths and weaknesses of the bench and bar, whatever they may be, are attributable to legal education and the extent to which they are a consequence of other factors in the environment in which lawyers work. In short, the paucity of reliable data regarding either professional performance or the relationship between professional performance and legal education puts an answer to the question whether law schools are doing their job beyond our present capacity.

It may be, indeed, that a satisfactory answer to the question is in principle beyond our grasp. I have been assuming, correctly I

believe, that in asking the question whether law schools are doing their job, your convenors intended to raise the issue of how well the schools are doing in training young men and women to be lawyers. The implicit premise is that the performance of the schools should be measured by the performance of the bar. For reasons that will appear, I have difficulty with the premise, but even if that measure of the law schools' performance were accepted, answering the question whether law schools are doing their job would pose a formidable task, and perhaps an impossible one. There is, to put the point bluntly, too little agreement within the profession and within the larger society regarding the desirable characteristics of lawyers. It is worth recalling that not many years ago the American Bar Foundation, as part of a larger project on legal education, undertook to describe "the competent lawyer." The project foundered at the outset because of the inability of the lawyers consulted to agree upon the characteristics necessary to or desirable in "a competent lawyer" and how they should be weighted.

A single illustration will help to explain the difficulty. It is a common complaint, often made by lawyers though perhaps more frequently by laymen, that lawyers are overly zealous in representing their clients. The aggressive, single-minded pursuit of client interests, it is often argued, disables lawyers from seeking solutions to their clients' problems that are just both to clients and to those with whom the latter have dealings. In addition, the argument continues, the adversarial stance of lawyers prevents them from searching out opportunities for accommodating and composing differences. Law schools are often blamed for this asserted characteristic of lawyers. The emphasis on litigation in most law school courses, it is said, leads students, at a minimum, to perceive conflict only in adversarial terms and too often as though it were a zero-sum game.

Yet, many lawyers argue that aggressive representation of competing interests offers our best hope for the just resolution of controversies. Lawyers who take this position concede, of course, that the pursuit of client interests must take place within the framework of legal rules that define a lawyer's ethical obligations, but, they maintain, within those rules lawyers ought to be, and young lawyers too infrequently are, single-minded in the advocacy of their clients' interests. This asserted failing of young lawyers is attributed to the law schools, which, it is said, fail to instill in their students an appreciation of the importance of zealous devotion to the client's cause, focusing instead upon the just resolution of controversies.

Is it not clear that this debate is less about legal education than about the question, over which the profession is increasingly divided, whether (or of the extent to which) lawyers should assume responsibility for the just disposition of the various matters in which they

become involved? Is it not also clear that the professional debate about the proper conduct of lawyers reflects an even deeper cultural division regarding the desirability of aggressive behavior and the relative weight to be given the competing claims of individual and community and of self-interest and altruism?

In the face of professional and societal disagreements such as these, it is difficult to imagine what standard might be employed to determine whether law schools are doing their job. Some observers may, of course, wish to evaluate schools on the basis of a judgment about whether the schools are guiding students toward one or another conclusion, but those who understand the aims and potential of university education will appreciate the inappropriateness of doing so. The task of legal education is not to lead students toward particular answers respecting socially controversial issues, but to enable them to think about the issues more deeply than they otherwise might. It is, in any event, unlikely that law schools could do more even if they were to make the effort. I do not mean to suggest that what occurs in law schools has no effect on the attitudes that young lawyers adopt toward the performance of their professional responsibilities, but it is naive to suppose that three years of legal education will have a decisive influence on the behavior of most law school graduates. Even if law faculties were of one mind regarding the issues, a wildly improbable supposition, too many other factors are at work that overpower whatever influence three years of legal education may have.

Students come to law school as adults. Their personalities, the ways in which they deal with other people, and their attitudes toward human conflict are a good deal less malleable than seems to be supposed by those who look to legal education to shape students to a particular professional mold. To be sure, the determinants of lawyer behavior are not irrevocably fixed prior to the first day of law school, but to the extent that the relevant personal characteristics and attitudes of fledgling lawyers are still being shaped, lessons learned in law school about the appropriate behavior of lawyers are, for nearly all students, likely to be much less influential than what they learn from observing the behavior of practicing lawyers. It should not be surprising that the lawyers encountered in summer clerkships and in the early years of practice are the models to whom students and young lawyers look for clues about how they ought to conduct themselves. After all, it is those lawyers, not members of law faculties, who face the questions that students and young lawyers confront in practice and who lead the lives to which the latter aspire.

I want to emphasize that I am not arguing that law faculties are without influence upon the ways in which law is practiced. Schol-

arship may affect some lawyers' understanding of their responsibilities. Questions posed in law school classrooms, it may be hoped, lead students to reflect upon their responsibilities as lawyers and upon prevailing practices among members of the bar, perhaps affecting their conduct in practice. But the effects of scholarship and of lessons taught in the classroom are, at a minimum, significantly shaped by the characteristics students bring to law school, by the circumstances of their practices upon graduation, and by the lessons taught by senior lawyers. Any effort to assess the performance of law schools by assessing the performance of the bar merely ignores these latter influences.

Since I do not want to spend all my time on what law schools cannot do, let me turn to the question, "What is the job of law schools?" I suspect most lawyers and laymen would not consider that a very difficult or a very interesting question. The job of a law school, I take it most would say, is to train people to be good lawyers. In an article published last year,¹ I argued that this common sense definition of the purpose of legal education is too narrow. Students, I maintained, are not merely instruments to be shaped in accordance with someone's conception of how they can be made most useful to their future clients or how they can be made to serve best someone's conception of social utility. The students are themselves the end of the educational process. The proper object of a legal education, as of any other form of education worthy of the name, is to enlarge the capacity of students to realize their human potential. It should aim not merely to equip students for the eight or ten or twelve hours a day in which they will be performing in professional roles, but to assist them in developing character traits, intellectual skills, and an understanding of law and its place in human society that will enrich their lives and enhance their capacity to act as moral beings. A good legal education is in this sense a continuation of a liberal education. To be sure, its focus is narrower than the undergraduate education that we commonly associate with liberal education. But like a liberal education, its main object is to enable men and women to think clearly, to feel intelligently, and to act knowingly.

The arguments for this conception of legal education and what I think it entails for the programs of law schools are set forth in that article. Rather than repeat what I have written elsewhere, I want to address the concerns of those who fear that the conception of legal education advanced in that article places too little emphasis on training for the professional responsibilities that students will bear upon graduation from law school. Don't law schools, critics

1. *The Moral Responsibility of Law Schools*, 34 J. LEG. ED. 63 (1984).

of that conception ask, have a responsibility to the public to graduate competent lawyers? Law schools are, after all, the only portal through which all lawyers must pass. Doesn't that impose upon law schools an obligation to assure that their graduates are competent to practice law? Those who ask these questions seem to suppose that once it is acknowledged that law schools have an obligation to produce competent lawyers, a program of instruction automatically follows. They maintain that since lawyers negotiate, schools must offer training in the skills of negotiation; since lawyers argue in court, schools must offer training in the skills of trial advocacy; and since lawyers require knowledge of law office management, that too should be taught in law schools. I am reminded of one wag's comment that if a carload of lawyers on their way to a bar association meeting were killed in an accident, there would be those who would argue that law schools should begin programs of driver education.

The question how law schools can best contribute to improving the quality of the profession is, however, a good deal more difficult to answer than has been appreciated by those who have been urging a greater professionalization of law school curricula in the interest of lawyer competence. A serious effort to answer the question would require, first, that we identify the qualities of good lawyers. It would require also that we consider the extent to which law schools are capable of assisting students to develop the qualities identified. In answering the latter question, account would have to be taken of the limited resources of law schools. I have in mind not only limited financial resources, but the limits of our most important resource—the time, energy, and attention of students. Because our resources are limited, we need to direct them toward the educational objectives with respect to which law schools have a comparative advantage. The inclusion of trial practice and other “skills” courses in the curriculum cannot, in other words, be justified merely by demonstrating that the skills and knowledge they offer students will make the students better trial lawyers. One wants to know also whether, taking account of the other settings in which such skills and knowledge might be acquired (e.g., in practice or continuing legal education programs), the school's resources might better be devoted to assisting students in gaining knowledge and capacities that are less likely to be acquired outside an academic setting.

The task of defining the qualities of a good lawyer is complicated both by the absence of a professional consensus and by the diversity of positions that lawyers occupy in our society. The two are, of course, related. Lawyers with differing tastes, values, and skills tend to migrate to different types of practice. Similarly, lawyers in different types of practice may require different skills or the same skills in different degree. Law students, however, do not neatly sort

themselves by school according to their future specializations and practice settings. Among the graduates of my school, for example, some are to be found in every practice setting and in every specialty that exists in the United States. Studies that we have undertaken reveal that the largest number of our graduates practice in settings and in specialties other than they had anticipated when they entered law school or even upon graduation. Many, indeed, practice specialties and draw upon knowledge that did not exist when they were in school. It seems to follow that if legal education is to be shaped by the demands of practice, law schools must, if they are to do their job, equip their students for a wide range of unknown careers.

If legal education is to be shaped by the responsibilities lawyers are called upon to assume, some attention also must be given to the frequency with which lawyers hold important positions of public leadership. Among the graduates of my school, which in this respect is surely not unique, one currently is a governor, nearly a dozen serve in the Congress, a larger number serve in state legislatures, and many hold policy-making positions in the executive branches of federal, state, and local governments. A still larger number hold judicial office. Even those who do not hold public office often play an important public role, as political leaders, as ranking executives of corporations, or simply as citizens.

Despite the variousness of lawyers' careers, I think there are some qualities that are constitutive of the idea of "a good lawyer," qualities whose importance transcends particular practice settings and specialties and that are central to discharging the other responsibilities that lawyers so frequently assume. A list of those qualities, not coincidentally, is identical with the list of qualities that, in my earlier article, I maintained were the proper concerns of legal education because of their importance in enabling students to realize their human potential. The list does not exhaust the qualities that law schools should help their students to develop, but it will serve to indicate the direction that, in my judgment, law schools should take in discharging their responsibility to produce competent lawyers. What are the qualities that I have in mind?

They are, first, a number of virtues associated with the word "character": courage, patience, perseverance, and other qualities that are necessary to maintain steadfastness of purpose in the face of life's vicissitudes. Every lawyer who has practiced law for any length of time knows the importance of these qualities. For reasons that I have already suggested, I do not believe that law schools can do much to develop these qualities in their students, but they do have some capacity to reinforce—and, it should be acknowledged, to weaken—traits of character that students bring with them. We need to do what we can—more, I believe, than we have been doing—to

assist students in strengthening those traits that are necessary to the moral life, which is not quite the same as attempting to fashion the students in our image of moral persons.

Lawyers also require a range of intellectual skills and qualities. Some are comprehended by the no-longer fashionable phrase "thinking like a lawyer." They include the skills of analysis and synthesis, the ability to read with care and with attention to the nuances of language, the capacity to identify the premises of an argument, and the ability to reason in an orderly fashion from those premises. Law schools have, of course, traditionally devoted a good deal of attention to the development of these skills, and many lawyers regard that development as the most valuable part of their legal education. There are, however, other intellectual qualities that lawyers require and to which law schools have perhaps paid too little attention. They include the capacity to avoid certain common hazards to clear thought: provincialism of time and place; excessive reliance on familiar categories of thought; an inability to tolerate uncertainty; sentimentality; and self-interest. The importance of that capacity, if lawyers are adequately to represent their clients and perform their other responsibilities, is too obvious to require extended discussion. Surely, it must give pause, to take but a single illustration, that the American Bar Association recently promulgated Model Rules of Professional Conduct announcing that confidential information relating to the representation of a client is an inviolable trust whose secrecy must be maintained unless divulgence would serve the lawyer's personal interest.² What is one to think of the ability of those who voted for this conclusion to examine arguments objectively, free from the distorting influence of self-interest?

A good lawyer is, finally, defined in part by his or her knowledge and understanding of the law. I do not mean that good lawyers require familiarity with all the evanescent detail of the law, even in their areas of specialization. But a good lawyer does have an understanding of the guiding principles of our legal system. That understanding consists in part of a knowledge of legal rules, but it plainly involves something more. The additional element is what experienced lawyers have in mind when they say that a lawyer has a "feel" for the law, or a "feel" for what is right, in a particular situation. Without it, no lawyer can adequately counsel clients or argue effectively in court or before an administrative agency. Despite the vagueness with which this added element of understanding is often described, there is nothing mysterious about it. It consists of an understanding of the social context of problems, of the rela-

2. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 (1983).

tionships between law and society, of the forces that make for stability and change in the law, and of our evolving societal morality and ideals. A good deal of that understanding is intuitive or, at best, the product of unsystematic observation. A century ago, no other sources of understanding were available. More recently, however, it has become possible for lawyers to draw upon the learning of other disciplines—such as economics, psychology, and sociology—that have begun to investigate systematically many of the questions that law, and therefore lawyers, must confront.

The knowledge and techniques of other disciplines have become part of the intellectual environment within which lawyers work. One need not suppose that they offer an answer to all, or even very many, of the issues that lawyers address to recognize their importance. The practice of antitrust law or environmental law requires some knowledge of economics. An understanding of statistics is required by those who practice labor law. Even more traditional areas of legal practice have not escaped the influence of other disciplines. Adequate representation of clients in domestic relations cases, for example, depends upon some familiarity with modern psychology and sociology.

There are reasons other than the professional demands of particular specialties for believing that lawyers require an understanding of other disciplines. Lawyers who lack a sense of the direction of the law and an understanding of the ways in which political, economic, and social forces affect that direction and the pace of change are not likely to represent their clients effectively. A lawyer's "sense of direction," even today, is likely to be mostly intuitive, but in the modern world even our intuitions are in some measure shaped by the social sciences. Lawyers need an understanding of the source of those intuitions and of the limits of other disciplines if they are to represent their clients effectively. Some familiarity with history and other humanistic disciplines is equally essential if intuition is to be educated. A knowledge of legal history may, for example, help to deepen a lawyer's understanding of law's responsiveness to social forces or the prevailing climate of ideas. Familiarity with another legal system may help lawyers to appreciate more fully the part that particular laws and legal institutions play in their own system.

If I am right that an understanding of law, of the kind I have briefly described, is essential to being a good lawyer, the implications for legal education are clear. Law schools ought to devote themselves to cultivating that understanding among their students. Achieving that understanding is, of course, the work of more than three years or even a lifetime, but it is in educating students to undertake the quest that law schools can make their most important contribution to the profession. No doubt, lawyers also require other skills and

knowledge. Lawyers who try cases must know how to introduce documents into evidence and how to frame questions for cross-examination. Nearly every lawyer engages in negotiation and, therefore, must be skilled in the art if clients are to be adequately represented. The comparative advantage of law schools, however, is surely not in training students in the skills of negotiation and trial advocacy. I am not even certain that these skills can be developed as effectively in law school as in practice, but even if they can, it is in educating students for a broad understanding of the law that schools have a comparative advantage. It is in undertaking to perform that function that the schools can most effectively "spend" their scarcest resource—the time, energy, and attention of students.