

## **Law Center Writing Diagnostic Assessment, Project 1 Reading, Fall 2009**

The readings below will be used for the timed writing assessment you will take during Orientation. Please feel free to read them ahead of time, and to print a copy and bring it with you to the Writing Diagnostic Assessment.

### **Sources:**

#### **1. The Minnesota Lawyer (Minneapolis, MN), May 19, 2003, Commentary: Is law school relevant to the practice of law?**

Neil Hamilton

Some lawyers comment that what a student learns in law school is not very relevant to the practice of law. I disagree . . . .

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The second reason I disagree . . . is reflected in professor John Sonsteng's research to determine the extent to which law schools teach the skills necessary for the practice of law. Sonsteng surveyed Minnesota lawyers in 1997-98 . . . . Responding lawyers believed that law schools do provide education that addresses some of the legal practice skills rated most important in the practice of law. [R]esponding lawyers also ranked legal practice skills in terms of their importance in the practice of law.

The good news for legal education is that of the four skills that lawyers thought were most important in the practice of law, the respondents thought law schools prepared them well in three of them:

- \* ability in legal analysis and legal reasoning;
- \* written communication; and
- \* oral communication.

The bad news is that practicing lawyers rated the ability to diagnose and plan solutions for legal problems as the most important skill out of the 17 listed skills, but only 55 percent thought law school provided preparation at that skill.

Practicing lawyers ranked negotiation skills as sixth most important in law practice. This makes common sense since both litigators and transactional lawyers negotiate extensively; however only 30 percent thought that law school provided adequate preparation at negotiation.

Practicing lawyers rate the ability to diagnose and plan solutions for legal problems as the most important skill for the practice of law. A shorthand for this skill is creative problem solving. The law schools should look for opportunities to help students develop this skill. It is closely related to the counseling skill because the lawyer who can listen well and understand the client's

situation can then help the client understand the client's best interests in a broader context. This will expand the solutions available to address the client's problem, and increase client satisfaction with the solution.

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Legal education must also focus on the client relationship skills: instilling others' confidence in you, counseling, and the ability to obtain and keep clients. These are critical skills that clients want to see in their lawyers.

## **2. Texas Lawyer, November 27, 1995**

**Employment: An Alarming Equation; How Do 3,000 Law School Graduates fit into 500 Legal Jobs?** Stephen R. Marsh, a Wichita Falls solo practitioner.

The largest problem facing the State Bar of Texas is a numbers game. According to Bar estimates, it goes like this: 3,000 graduates pass the bar exam each year; there are fewer than 500 job openings for them to fit into. Of those openings, perhaps 200 provide any substantial training programs; and mentoring programs, like the American Inns of Court, provide supplemental help for only about 50 graduates each year.

So the Bar is left with the question of what to do to help the approximately 2,500 lawyers who start their own practices each year, not to mention the 300 or so "undertrained" lawyers who are lucky enough to land jobs. Should something be done, or is the current MCLE setup enough?

Something should be done. I propose five steps -- some of them quite radical -- that should be implemented as soon as possible. They are listed from first to last by what can (and should) be done first to what may (if ever) come last: Immediate Steps

1. Provide realistic career planning and placement advice to all pre-law students and law school applicants and again to first-year students right after they get their first grades.

2. Provide useful essential-skills training for law students by resurrecting the Practice Skills Courses created by the Texas Bar in the 1980s. Intermediate Steps

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### **Realistic Career Advice**

Law schools must begin teaching students what the numbers -- 500 jobs for 3,000 graduates -- mean. They mean you're talking about placing only the top 16 percent of students who pass the bar exam. Students need to know this, especially since those who are in the bottom 50 percent of their class at the end of the first final exams do not have a realistic chance of moving into the top 16 percent.

### **Real-World Connections**

Some 2,500 newly licensed attorneys begin practice each year without a clue about the real legal world. Informal surveys of students who took practice-oriented classes in Texas law schools reveal that most failed to learn much of practical use. Any student who can reasonably

expect not to be one of the 200 graduates a year whose firms provide training needs to be taught some real-world skills.

The basic three-hour general skills classes, each with its forms and drills, from the old State Bar of Texas Practice Skills Courses, should be provided to students while they are still in law school. (There are enough segments to make up a 10-Saturday program of three hours each to be provided the last semester, or quarter, before graduation.) The current environment ensures that most students will begin to practice law with no other guidance or preparation beyond these programs. They may not be much, but they are far better than the current void.

This is a change that should be implemented immediately with full realization that we have an emergency as far as these kids are concerned. This means rewriting, expanding and updating the Practice Skills Course materials. It means a commitment, from adjunct professors and volunteers, to revamp, teach and share these materials with most students at every Texas law school as soon as possible. . . .

### **3. ABA Journal ENGLISH, February, 1998; Supreme courts in Maine, N.H. and Vt. mull plan requiring joint skills classes for would-be lawyers**

Hope Viner Samborn

After two years of study, a task force is asking state supreme courts in Vermont, New Hampshire and Maine to consider establishing a skills course that may allow bar applicants to be licensed in all three states.

In a groundbreaking effort, the states established the task force of judges, lawyers and laypeople to consider concerns raised by a 1992 ABA task force report on law schools and the profession. The report concluded that law school graduates have not sufficiently developed the skills necessary to practice law.

Requiring skills classes is not unusual. Seventeen states, including New Hampshire and Vermont, reported to the bar examiners conference that they require skills or professionalism programs before or soon after the bar exam.

Maximilian Kempner, a member of the tri-state and ABA task forces, believes more emphasis should be placed on developing skills rather than memorizing doctrine for the bar exam. "Students graduating from law school are not equipped to practice law without supervision," says Kempner, former dean of the Vermont School of Law.

[T]he three-state proposal is still in embryonic stages. It suggests that all bar applicants in New Hampshire, Vermont and Maine attend a four-to-six-week skills training course that would focus on such topics as negotiation, drafting documents, accounting, ethics and client interviews. The class would be offered to about 800 students a year at a cost of between \$ 500 and \$ 800 per person, says Linda Dalianis, a task force member and a New Hampshire judge.

#### **4. Chicago Daily Law Bulletin, January 7, 1994, Grads throw curve grading schools**

Laura Duncan; Law Bulletin staff writer

Local law schools got a poor report card from recent graduates for the attention given to oral communication, drafting and other practical skills, according to a study by the American Bar Foundation.

The survey of 512 recent graduates found that their alma maters' curriculum got failing grades for oral communication, a skill that most found was "extremely important" to practice. Only 28 percent said their law schools gave "sufficient attention" to teaching them how to draft legal documents. Just 26 percent said enough attention was given to litigation skills.

"There's a fair amount of frustration among students who go forth and then wish they had some more practical skills, writing skills, drafting skills, which are particularly critical to them," said Joanne Martin, assistant director of the foundation. "They're not just essential to the practicing of the profession: If you look at in terms of doing well and doing the clients well ... they're not peripheral skills."

. . . .

The results were recently analyzed as part of a broader legal education study . . . .

In that study, the ABF found that most of the recent graduates ranked oral and written communication skills as "extremely important" to practice law. The ability to draft legal documents was also deemed important, but litigation skills less so for lawyers heading to large law firms, Martin noted.

As expected, law schools got good marks for teaching legal reasoning and legal analysis, skills that have long been considered crucial to practice, according to Martin.

Law school officials historically have left most practical skills training to graduates' employers, but in recent years the American Bar Association and individual law schools have made it an important part of their mission. Under discussion is just how much emphasis to put on clinical work, since its necessarily low student/faculty ratio makes those courses more expensive.

Acquiring practical skills during law school is not necessarily a prerequisite for getting a job, noted the ABF's Garth in the study's results.

Hiring partners at Chicago law firms have said the two most important factors they consider in interviewing job candidates are where they went to law school and their class rank, ABF research has shown. . . .

#### **5. New Jersey Law Journal, November 23, 1998, Good Lawyers Are Made, Not Born**

Thomas Berman and Demetrios Dimitriou

It is a tantalizing question: What makes a "competent" lawyer? Can competence be measured? Do you know it when you see it? What, if any, is the relationship between lawyer

competence and professional liability claims? Experienced practitioners, said to be competent lawyers, are sued all the time. Does that mean they aren't really competent? Is there more involved? It's understood that law schools do not graduate competent practicing lawyers. They graduate people who theoretically have the necessary technical expertise -- how to find the law and "think like a lawyer," the most basic parts of a far more complicated equation. Nor do we think that mastering substantive principles of law completes the picture. Again, if anything, it is only part of the equation. We think that the answer lies in a combination of things: the facility for combining technical skills with substantive principles and the application of both to a work product that establishes and then meets reasonable client expectations. Is this the true definition of lawyer competency?

A large-scale American Bar Association study of client concerns or expectations relating to lawyers indicated that these four factors were most important:

Competence, Commitment (concern or involvement), Integrity, Fee issues

The study group's working definition of lawyer competence was a combination of knowledge and experience. We defined it earlier as the facility for combining technical skills with substantive principles and the application of both to a work product that establishes and then meets reasonable client expectations. How does that definition relate to questions of professional liability and a risk-adverse practice?

#### Performance Competence

We think the question further revolves around the added element of what we might term "performance competence." Adding this element, in effect, raises the bar. It is not enough to know the law or even to know how to apply substantive principles. To be considered a competent lawyer, you must take it one step further and possess the ability to apply your skills in order to make knowledge of the law and a basic understanding of law practice work for your client. Conversely, lawyer deficiency or lawyer incompetence really boils down to the inability to apply one's technical legal skills in concert with knowledge and understanding of the client's mutually agreed-upon needs and expectations. A lawyer must understand the client's needs, desires and economic goals in order to formulate an acceptable course of action. A competent lawyer, then, may be said to be one who can deliver a legal service that solves the client problem or meets a client's concern, within the client's reasonable economic parameters. As a further measure, the concept of competence also includes the lawyer's ability to communicate adequately with the client in the establishment of reasonable goals and then to perform the agreed-upon services within the client's expectations.

The ability of a lawyer to meld a solid foundation with basic practice skills and to focus these skills in an orchestrated effort to match client needs and expectations with available legal remedies is truly what defines a competent lawyer . . . .