

LEGAL EDUCATION AND PROFESSIONAL
DEVELOPMENT — AN EDUCATIONAL
CONTINUUM, REPORT OF THE TASK
FORCE ON LAW SCHOOLS AND THE
PROFESSION: NARROWING THE GAP,
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INTRODUCTION

This American Bar Association (ABA) Task Force publication is a report of the findings of an in-depth study of the “range of skills and values necessary for a lawyer to assume responsibility for handling a legal matter.”¹ The ABA Task Force which prepared the Report was comprised of approximately 40 leading law academics, legal practitioners and members of the judiciary. The project took three years to complete and is commendable for its thoroughness² and the manner in which it built upon the foundation laid by earlier studies such as Zemans and Rosenblum, *The Making of a Public Profession*.³

The purpose of this review article is twofold: first, to summarise the findings of this ABA Task Force Report which was released in November 1992; and second, to consider what implications this US study may hold for Australian Legal Education which is facing, or in the future will face, many of the same issues.

INTRODUCTION TO THE REPORT

The Report begins by taking issue with the name given to the Task Force which was to examine the “gap” which separates the legal education community from the profession. The image of a “gap” which must be closed is a distorted one. For this reason, the authors chose for its title the word “continuum” as opposed to “gap”.

The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer’s professional career. Legal educators and practicing lawyers should stop viewing themselves as separated by a “gap” and recognize that they are engaged in a common enterprise — the education and professional development of members of a great profession.⁴

PART I. THE PROFESSION FOR WHICH LAWYERS MUST PREPARE

Growth of the Legal Profession

The Report is divided into four major parts, the first of which presents a profile of a profession undergoing rapid change and experiencing increasing diversification. Law in the US is now a “\$91 billion-a-year service industry, employing more than 940,000 people, and surpassing the medical profession in the number of licensed professionals, with one lawyer for every 320 persons in the United States.”⁵ The geographic dispersion of lawyers ranges from 1 lawyer per 21 persons in the District of Columbia to a ratio of 1/658 in the State of North Carolina.⁶

Changing Demographics of the Legal Profession

Not only are there more lawyers, but they are younger; between 1960 and 1980 the median age of lawyers went from 46 to 39 years with lawyers under the age of 36 comprising almost 40% of all lawyers.⁷ Perhaps the most significant change in the demographics of the legal profession is the growth of women in the profession. The number of women enrolled in US law schools went from 4% in the 1965–66 academic year to more than 40% in 1991–92.⁸ As a

result of this increase, the percentage of women in the legal profession has risen dramatically in the last two decades.⁹

While there are signs that the legal career paths of women are beginning to merge, more women lawyers are more likely than their male counterparts to go into government work, legal aid and public defender offices. They were also more likely to have interrupted career paths and to work part-time at some point in their careers.¹⁰

Regarding the impact of women on the legal profession, the Report concludes:¹¹

The interpersonal issues brought to the fore by women lawyers have included matters relating to pregnancy; rape, sexual harassment in the workplace; judicial treatment of judicial violence; sexual relations between attorney and client; sexual stereotyping and other forms of bias and discrimination in both the courts and the other practice settings which are part of a lawyer's professional life.

The expressed concerns of women lawyers have also raised a broad range of issues pertaining to the established structure of the practice of law. These structural issues include the work/family conflict, the rigidity of the established practice model, pregnancy and parenting leaves, day-care, flexible work schedules, including working part-time, temporary hiring of lawyers and alternative tracks for career advancement.

Legal scholars debate the issues as to a women's "different voice" and the "sameness" and "difference" between women and men, as well as the reality of a "feminist jurisprudence," advanced by a gender, who, because of their own life's experience, may be better able to identify with the disenfranchised than those who have traditionally created and interpreted the law.

At the center of this discourse lies the practical imperative of how legal education and the legal profession will adapt to the gender change. Having begun in the law schools in the late 1960s, it has now spread in varying degrees into every segment of the profession, but with mixed results. Equal opportunity for women and freedom from gender bias are goals toward which the profession as a whole continues to struggle.

As to opening up the legal profession to minorities, the Report concludes that law schools have made a "promising beginning, but only a beginning."¹² While the 1970s and 1980s saw more black law students, lawyers and judges, African Americans today comprise 12.1% of the US population, but only 3.3% of the legal profession.¹³

An Increasingly Diversified Legal Practice

Another major change in the legal profession is the increasing

variety of practice settings and differentiated work performed by lawyers. The last 50 years has seen the profession evolve from one in which the majority of lawyers were sole practitioners dealing with individual clients, to a profession increasingly marked by larger firms predominantly engaged in serving the business community.¹⁴ Among the other trends noted by the report are:

- The rise of whole new areas of legal service, covering such areas as the environment, occupational health and safety, nuclear energy, discrimination, health care, computers and biotechnology;¹⁵
- Increased specialisation in legal practice¹⁶ and greater advertising of such expertise;¹⁷
- The formation by small firms of formal and informal networks of firms engaged in similar practices. This has involved the sharing of management expertise, training, litigation support, practice-development strategies, etc and has enabled small firms to remain competitive with larger firms¹⁸
- New methods of legal service delivery have evolved to meet the needs of the poor and person of modest means.¹⁹ These include: group legal service plans, pre-paid plans, employee assistance plans, pro bono services, lawyer referral services, etc.²⁰
- The present world-wide recession has resulted in a downsizing of some large firms. Other large firms have continued to expand by developing a multinational law practice which has become involved in developments such as the EEC Common Market, the expansion of the Asian economies, and privatisation of national enterprises. Moreover, the economic and financial linkages which are necessary in a global economy have enabled some firms to find new clients eager for their services.²¹
- Though not matching the growth of large law firms, the total number of lawyers employed by corporations grew significantly during the 1970s and 1980s.²²
- The 1970s and 1980s also saw a significant expansion in public lawyers serving local, state and national governments and administrative agencies.²³

Regulation of the Legal Profession

Chapter three of the Task Force Report traces the evolution of regulation of the legal profession in the United States. Similar to

Australia, the training of lawyers has moved from an apprenticeship model to one in which law schools are responsible for the training of lawyers. Moreover, for most lawyers the professional organisations did not exist beyond the particular locality in which one practiced. Consequently, there was no consensus regarding the nature and scope of lawyer training, how one was to become a lawyer or what functions the legal profession should serve in society.²⁴ By the 1870s, however, bar associations grew, at first in the major cities, then states and ultimately nationally with the founding of the American Bar Association in 1878.²⁵

The growth of professional associations was married to a similar growth in universities; and in 1881, the ABA initiated a campaign to recommend a national uniform type of academic training for lawyers which would take place in a three-year university course.²⁶ “Today, all but seven states require all applicants for admission to have graduated from a three-year law school program (or its part-time equivalent). California, Vermont, Virginia and Washington do permit law office study (for the few who wish it) to be a substitute for law school graduation, and Maine, New York, and Wyoming permit a combination of law school and law office study as a substitute for law school graduation.”²⁷ Today, almost all US lawyers commence their professional training in one of almost 200 law schools which collectively employ almost 6000 full and another 4000 part-time law academics, together with 2500 administrators and law librarians.²⁸

In addition to its alliance with law schools, the ABA also saw the need for the profession to articulate its own values and to promote itself via *Cannons of Professional Ethics*.²⁹

The third force which regulates the legal profession is the judiciary.³⁰

Today the highest courts of the several states are the gatekeepers of the profession both as to competency and as to character and fitness. As to competency most state courts rely on graduation from an ABA-accredited law school and on a written bar examination which includes the Multistate Bar Exam. As to character and fitness, the state courts provide for their own investigations under guidelines generally adapted from the ABA guidelines pertaining to character and fitness.³¹

The self-regulation of the profession by the ABA, law schools

and the judiciary has not gone unchallenged. Various State legislatures have sought to regulate various aspects of the profession, including attempts, made early-on, to eliminate all qualifications for admissions.³² Commentators³³ have also argued that since the majority of lawyers today perform corporate or business work, rather than courtroom work, the regulation of the profession should be the province of the legislature rather than the courts. Finally, consumers, too, have challenged the legal profession's restrictions on advertising,³⁴ provision of group legal services,³⁵ and minimum fee schedules.³⁶

Despite these challenges to its self-regulation, the Task Force affirms the importance of self-regulation as helping to "maintain the legal profession's independence from government domination, permitting the profession to be an important force in preserving government under law, standing ready to challenge the abuse of authority."³⁷ At the same time the ABA and the Task Force Report acknowledges that the privilege of self-regulation carries with it the responsibility to enforce rules of professional conduct:

Together, the law schools and the organized bar can have no more important function than to pass to each succeeding generation of lawyers and understanding of the profession's relationship to the American legal system. If a single public profession of shared learning, skills and professional values is to survive into the 21st century, the law schools, together with the bar and the judiciary must all work for the perpetuation of core legal knowledge together with the fundamental lawyering skills and professional values that identify a distinct profession of law throughout the United States.³⁸

PART II. A VISION OF THE SKILLS AND VALUES NEW LAWYERS SHOULD SEEK TO ACQUIRE³⁹

Central to the Task Force's Report was its attempt to formulate a vision of what fundamental lawyering skills and ethical values should be central to legal education. The Committee, however, emphasises the point that the vision outlined below is not the final word on the subject, but only a starting point for discussion to encourage the profession, legal educators and the judiciary to reconsider in a holistic way what skills and values new lawyers should acquire through the continuum of their legal careers. The Taskforce Report articulated the following vision of the skills and values which new lawyers should seek to acquire:

FUNDAMENTAL LAWYERING SKILLS

Skills 1: Problem Solving

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

- 1.1 Identifying and diagnosing the Problem;
- 1.2 Generating Alternative Solutions and Strategies;
- 1.3 Developing a plan of action;
- 1.4 Implementing the plan;
- 1.5 Keeping the planning process open to new information and new ideas.

Skills 2: Legal Analysis and Reasoning

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

- 2.1 Identifying and formulating legal issues;
- 2.2 Formulating relevant legal theories;
- 2.3 Elaborating legal theory;
- 2.4 Evaluating legal theory;
- 2.5 Criticizing and synthesizing legal argumentation.

Skills 3: Legal Research

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

- 3.1 Knowledge of the nature of legal rules and institutions;
- 3.2 Knowledge of and ability to use the most fundamental tools of legal research;
- 3.3 Understanding of the process of devising and implementing a coherent and effective research design.

Skills 4: Factual Investigation

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

- 4.1 Determining the need for factual investigation;
- 4.2 Planning a factual investigation;
- 4.3 Implementing the investigative strategy;
- 4.4 Memorializing and organizing information in an accessible form

- 4.5 Deciding whether to conclude the process of fact-gathering;
- 4.6 Evaluating the information that has been gathered.

Skill s 5: Communication

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

- 5.1 Assessing the perspective of the recipient of the communication;
- 5.2 Using effective methods of communication.

Skill s 6: Counseling

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skill and concepts involved in.

- 6.1 Establishing a counseling relationship that respects the nature and bounds of a lawyer's role;
- 6.2 Gathering information relevant to the decision to be made;
- 6.3 Analyzing the decision to be made;
- 6.4 Counseling the client about the decision to be made;
- 6.5 Ascertaining and implementing the client's decision.

Skill s 7: Negotiation

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

- 7.1 Preparing for negotiation;
- 7.2 Conducting a negotiation session;
- 7.3 Counseling the client about the terms obtained from the other side in the negotiation and implementing the client's decision.

Skill s 8: Litigation and Alternative Dispute-Resolution

Procedures

In order to employ — or to advise a client about — the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of:

- 8.1 Litigation at the trial-court level;
- 8.2 Litigation at the appellate level;

- 8.3 Advocacy in administrative and executive forums;
- 8.4 Proceedings in other dispute-resolution forums.

Skill s 9: Organizations and Management of Legal Work

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

- 9.1 Formulating goals and principles for effective practice management;
- 9.2 Developing systems and procedures to ensure that time, effort and resources are allocated efficiently;
- 9.3 Developing systems and procedures to ensure that work is performed and completed at the appropriate ‘ time;
- 9.4 Developing systems and procedures for effectively working with other people;
- 9.5 Developing systems and procedures for efficiently administering a law office.

Skill s 10: Recognizing and Resolving Ethical Dilemmas

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

- 10.1 The nature and sources of ethical standards;
- 10.2 The means by which ethical standards are enforced;
- 10.3 The processes for recognizing and resolving ethical dilemmas.

FUNDAMENTAL VALUES OF THE PROFESSION

Value s 1: Provision of Competent Representation

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

- 1.1 Attaining a level of competence in one’s own field of practice;
- 1.2 Maintaining a level of competence in one’s own field of practice;
- 1.3 Representing clients in a competent manner.

Value s 2: Striving to Promote Justice, Fairness, and Morality

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the

values of:

- 2.1 Promoting justice, fairness, and morality in one's own daily practice;
- 2.2 Contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them;
- 2.3 Contributing to the profession's fulfillment of its responsibility to enhance the capacity of the law and legal institutions to do justice.

Value s 3: Striving to Improve the Profession

As a member of a self-governing profession, a lawyer should be committed to the values of:

- 3.1 Participating in activities designed to improve the profession;
- 3.2 Assisting in the training and preparation of new lawyers;
- 3.3 Striving to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, or disability, and to rectify the effects of these biases.

Value s 4: Professional Self-development

As a member of a learned profession, a lawyer should be committed to the values of:

- 4.1 Seeking out and taking advantage of opportunities to increase his or her knowledge and improve his or her skills;
- 4.2 Selecting and maintaining employment that will allow the lawyer to develop as a professional and to pursue his or her professional and personal goals.

PART III. THE EDUCATIONAL CONTINUUM THROUGH WHICH LAWYERS ACQUIRE THEIR SKILLS AND VALUES

The Report notes that for most students legal education is more than an "economic venture".⁴⁰ Indeed, the experience of legal education

frequently challenges and permanently alters law students' fundamental values and convictions. For most, law school results in a lifetime commitment to the legal profession. At least three-quarters of those who finish law school become career practitioners.⁴¹

The Report advocates the adoption of a holistic view of legal education which occurs through a developmental continuum of pre-law school education, law school and legal practice. Moreover, in order to enhance this development it is crucial for legal academics and legal practitioners to coordinate their efforts so that each new stage of development will reinforce and build upon the skills and values acquired at the previous level.

For law schools in particular, this means that they must expand the range of skills which they teach. As stated by the Task force on Professional Competence:⁴²

Recent research on American legal education concludes that the strength of legal education is teaching substantive law and developing analytical skills — often described as “teaching students to think like lawyers.” There appear to be no problems in law school curricular or pedagogy as they relate to the competence goal of making lawyers knowledgeable about the fields of law in which they practice. Law schools do well in teaching substantive law and developing analytical skills. The problems and issues in American legal education involve chiefly the teaching of other lawyering skills.

As noted in the vision statement above some of the other lawyering skills which require more attention include fact finding, investigation, alternative dispute resolution, and legal drafting.

PART IV. RECOMMENDATIONS OF THE TASK FORCE

Six major recommendations are made in the Report. They are:

Disseminating and Discussing the Statement of Skills and Values

It is anticipated that this vision of lawyer’s skills (described above) will be continually modified and enhanced. Moreover, it can be used by law students as an aid in preparing for practice and choosing subjects; by law schools in conducting a self-appraisal of their curriculum; by organisers of continuing legal education in organising resources and implementing reforms; and by individual lawyers in evaluating their own capabilities and needs for further training.⁴³

Choosing a Career in the Law and a Law School

Under this heading the Report calls for greater awareness on the part of pre-law students, of the importance of a good liberal

education, and a realisation of the “breadth, variety and differentiation of legal careers.”⁴⁴ Regularly updated legal career materials should also be made available to students at an early stage. Also information should be readily available regarding differences amongst law schools, eg tuition fees, library facilities, housing, enrollment and graduation statistics, curricular offerings, class sizes, faculty composition, existence of special programs, placement statistics, and so on.⁴⁵

Enhancing Professional Development During the Law School Years

The Report calls for a re-evaluation, in the accreditation process, of the treatment of skills and values instruction. The interaction between core subjects and professional skills and values should also be “revisited and clarified”.⁴⁶ Each faculty is asked to consider how it can best help law students begin to acquire the skills and values important to the practice of law, mindful that “[t]o be effective, the teaching of lawyering skills and professional values should ordinarily have the following characteristics: development of concepts and theories underlying the skills and values being taught; opportunity for students to perform lawyering tasks with appropriate feedback and self-evaluation; and reflective evaluation of students’ performance by a qualified assessor.”⁴⁷

While law schools should continue to emphasise and improve their teaching of the skills of legal reasoning, research and writing, they should also

be encouraged to develop or expand instruction in such areas as “problem solving,” “factual investigation,” “communication,” “counseling,” “negotiation,” and “litigation” recognizing that methods have been developed for teaching law students skills previously considered learnable only through post-graduation experience in practice.⁴⁸

Law schools should, through clinic programs, help students understand the importance of “organization and management” skills inherent in effective legal work as well as the skill of “recognizing and resolving ethical dilemmas.”⁴⁹ Law school faculty, staff and administrators should also inculcate in students the importance of promoting “justice, fairness and morality.”⁵⁰

Law schools should work together with employers to ensure that there is educational value in any work experience gained by

students during their law school course. Finally, “[l]aw schools should assign primary responsibility for instruction in professional skills and values to permanent fulltime faculty who can devote the time and expertise to teaching and develop new methods of teaching skills to law students.”⁵¹

Placing the transition and licensing process in the educational continuum

The Report stresses the point that all law students should have access to effective skills and values instruction, either as part of their law school training or during transition education.⁵² To achieve this goal,

transition education must be available that is not only of high quality but provided in sufficiently varied modes and with adequate flexibility to meet the differing needs of law students who have had markedly different instruction in law school and who enter practice in an extraordinary diversity of practice setting.⁵³

Presently, the licensing of lawyers is controlled by the judiciary in each state. The Report notes that in recent years considerable attention has been given to the question of how licensing authorities can ensure that lawyers have acquired the necessary values and skills.⁵⁴ Two approaches have been suggested: 1) requiring applicants to practice to have taken particular courses as a condition to admission; and 2) devising methods to better assess the types of values and skills desired.⁵⁵ Though a few states prescribe substantially all of the courses which students must take in order to be admitted to practice, the general view is that such a restriction has a stifling effect on law schools and the legal education they offer.⁵⁶ Recently, a few states⁵⁷ have attempted to design their bar exams so that, in addition to covering the traditional content areas and legal analysis, they measure a wider range of lawyering skills. Alaska, for example, requires students to write a memorandum based upon a set of facts and legal materials given to applicants.⁵⁸ In California, applicants are presented with a file containing memos, letters, police reports and other documents. They have three hours to complete a range of assignments involving, the outlining of deposition, drafting of pleadings, drafting memoranda, writing a closing argument, writing investigation plans, etc.⁵⁹

However, even performance tests do not go far enough; they do

not measure anything like the breadth of values and skills outlined above; and they are expensive and time-consuming to conduct. In addition, the adoption of such a performance test adds considerably to the burden on applicants unless traditional subjects are removed from testing.⁶⁰

Unfortunately, the licensing process has done little to encourage or measure the acquisition of professional values. Although many states require students to pass a separate exam devoted specifically to the subject of professional responsibility and candidates in all states must be shown to have the requisite moral character, it is unlikely that such measures contribute significantly to the development of professional values.⁶¹

Overall, it is the recommendation of the Report that the ABA Section of Legal Education and Admissions to the Bar “should revisit the treatment of skills and values instruction in the accreditation process in recognition of the skills and values identified in the Statement of Fundamental Lawyering Skills and Professional Values as those with which a lawyer should be familiar before assuming ultimate responsibility for a client.”⁶² There is also an urgent need for law schools, licensing authorities and the organised bar to work together within in a framework of a national institute (see discussion below) “to share information and to coordinate their efforts to improve the transition education for lawyers as they enter the profession. The Task Force urges all interested parties to engage in a continuing dialogue to determine the appropriate content, methods and mix of instruction in skills and values at each stage of the continuum of professional development: in law school, during the licensing process and after admission to practice.”⁶³

Striving for Professional Excellence after Law School

Legal education does not end with law school, but continues throughout the lawyer’s professional life. Thus, a major recommendation of the Report is the continued encouragement of continuing legal education (CLE) in which values and skills are viewed holistically as part of a continuum. The Report traces the evolution of CLE, a movement which has taken place primarily over the last thirty years. Today, some form of compulsory CLE is required in the vast majority of states. The requirements typically

mandate the completion of a certain number of hours of coursework (8–15 per year). Some states specify particular subjects such as ethics.⁶⁴

CLE in the US is provided by over 300 different organizations.⁶⁵ These include the three national providers (practicing Law Institute, the American Law Institute-American Bar Association Committee on Continuing Professional Education, and the American Bar Association); a number of independent State organisations, such as the California Continuing Education of the Bar and Michigan’s Institute for Continuing Legal Education; major local bar associations; law schools and private groups such as the Bureau of National Affairs, Prentice-Hall and Bankroft-Whitney.⁶⁶ In addition, many law firms, government agencies and corporations provide their own in-house training programs.⁶⁷

The Report notes that while there are no national statistics about the extent of CLE, the ALI-ABA publishes a Journal and Register which lists those courses which CLE providers have requested to be listed.⁶⁸

A year of listings in the CLE Journal and Register (May 1991–March 1992) totals 3,734 courses. Of these, 1965 were provided by state sponsors, 390 by the PLL, 116 by Federal Publications, 111 by ALI-ABA, 85 by the Bureau of National Affairs, and 76 by the ABA... Even these incomplete statistics testify to the multitude of CLE courses available today to the legal profession.⁶⁹

Although the growth and variety of CLE programs is commendable, much more must be done to ensure the quality of the programs offered. Among the possible improvements recommended by the Arden House III Conference on this issue are: better teaching methods adapted to the way in which adults learn, more innovative delivery systems, use of computer assisted legal instruction, need for training of CLE instructors.⁷⁰ This Arden House Conference also recommended that the ALI-ABA “undertake a study to designed to evaluate the quality of CLE programs and materials and the performance of CLE providers.”⁷¹

Establishing an American Institute for the Practice of Law

This ABA Report is acknowledged to be “only a beginning in overcoming the separateness in the several phases of lawyers’ professional development and in eliminating the gaps in the educational process.”⁷² If an increasingly diversified profession is

to preserve its unity and identity as a public calling more must be done to enhance this vision of a continuum of legal education and practice. To that end, the Report recommends the establishment of a national institute which would promote ‘excellence in the practice of law’. It would address on a continuing basis the entire process by which lawyers acquire and refine the lawyering skills and professional values which, together with the requisite learning, are required for competent and responsible practice.”⁷³

In particular, it is envisioned that the national institute’s work as falling in three main areas:

- Serving as a resource center and forum for legal scholars, educators and practicing lawyers working to promote lawyers’ professional development;
- Fostering research and development to enhance the profession’s understanding of lawyering skills and professional values and the means and methods by which lawyers learn; and
- Developing a plan and organizational structure to promote and disseminate courses and programs of continuing legal education.⁷⁴

SOME IMPLICATIONS FOR AUSTRALIA

Although the Task Force Report was written for an American Law School audience, it nevertheless highlights a number of issues which should likewise be considered by law schools in other countries, including Australia. A full discussion of these implications is beyond the scope of this review. Nevertheless, I will mention three which I consider to be especially important.

Firstly, the Report should lead the Australian legal profession to consider to what extent in Australia are the relationships amongst the various stages of legal education more accurately described as “gaps” rather than a continuum. While there are notable exceptions, I am of the view that a considerable amount of bridge-building remains necessary between pre-law school education, law school, legal apprenticeship and legal practice. Moreover, when one considers such relationships on an international scale, the “gaps” become wide chasms. According to an increasing number of commentators, this idea of a legal educational continuum should extend beyond state and national borders to include as well the internationalisation of legal education — a topic which was the

major focus of the recent Commonwealth Legal Education conference⁷⁵ held in Hong Kong in April of 1992 and the American Law School Association Conference in San Francisco in January of 1993.

Secondly, the ABA Report raises a large number of important curriculum concerns which are yet to be adequately addressed in Australia. For example, Australian law schools, like their US counterparts, focus on thinking and analytical skills. However, should Australian law schools instead place more emphasis on clinical education and teaching such skills as investigation, fact-finding, negotiation, and alternative dispute resolution? The Task Force Report applauds the apprenticeship system (via articles and legal practice courses) which is part of legal education in Australia and other Commonwealth Countries. However, can it be said that this system has itself been adequately evaluated in terms of whether it ensures that academics teach and students actually learn the skills and values inherent in professional excellence in the practice of law? Also, as mentioned above, are there sufficient linkages so that legal education becomes a continuum from law school to articles/legal practice course to legal practice? Finally, the ABA Report provides some useful guidance as to the kinds of programs which should be offered as part of continuing legal education — a growing industry which itself is in dire need of critical evaluation.

Finally, there is the issue of whether Australia should consider establishing some type of national institute to serve as a resource centre for legal scholars, educators and practitioners and to foster research and development in the area of legal education. It is ironic that the law profession is one of Australia's major service industries involving hundreds of million dollars each year, yet legal education remains both under researched and under-theorised.

FINAL EVALUATION AND CONCLUSION

Although in most every respect, this ABA Task Force Report is a valuable document which should be the starting point in the evaluation of law school curricula in the US, it can be criticised in a few areas. First, the report does not adequately account for both the theoretical and empirical void in the area of legal education. The final Task Force Report sometimes gives one the impression that we know more than we do about legal education and that consensus

on major educational issues either can be or is close to being achieved. Secondly, the report is rather provincial in its outlook. While it is natural for American law schools to be pre-occupied with the US version of legal education, the report fails adequately to take into account recent developments towards internationalism in legal education. In my view the report would have been improved had its vision been expanded to account for global as well as US developments in legal education and practice. Thirdly, in some places of the report the “list” of desirable skills is dangerously reminiscent of the behavioural objective movement days in education, which when carried to extreme, tends to ignore and devalue that which can not be quantified or measured — a real problem when confronting values issues. The Report would have thus benefited from more explicit recognition that “standard distinctions between academic and practical, theory and practice, liberal and vocational are false dichotomies that are mischievous as well as misleading.”⁷⁶ Finally, the Report could have been improved by more discussion of the resource implications for law schools should they become more actively involved in teaching such skills as investigation and give more emphasis to alternative dispute resolution.

In sum, however, these criticisms are minor, and the Committee should be commended for the thorough analysis and thought-provoking insights on a very important topic. I only hope that law schools, the judiciary and the profession will give this report the attention and consideration which it deserves. For in the end, the survival of the legal profession will depend not on borrowed ideas from management theory and practice, but on a coherent and compelling vision of professional excellence which is shared by all and reflected at every level of the continuum of legal education.⁷⁷

* Faculty of Law, University of Tasmania. For their valuable comments, I would like to thank and acknowledge my University of New Mexico Law School colleagues, Associate Dean, Peter Winograd, who served as Vice Chairperson of the Task Force and Professor Michael Norwood, who was the Task Force Reporter.
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¹ ABA, *Legal Education and Professional Development — Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (Illinois, American Bar Association, 1992) at xi.

² *Id* at xiii. The Task force functioned through seven active sub-committees and the authors of the report conservatively estimate that over 12,000 hours of volunteer time and support services without charge were given to the project.

- 3 FK Zemans & VG Rosenblum, *The Making of a Public Profession* (Chicago, Ill: American Bar Foundation, 1981).
- 4 *Id* ABA Task Force Report, *supra* note 1, at 3.
- 5 *Id* at 13, citing US Industrial Outlook 1991, Professional Services: Legal Services (SIC 81), at 524. See generally RL Abel, *American Lawyers* (New York: Oxford University Press, 1989)
- 6 *Id* ABA Task Force Report, *supra* note 1, at 1516.
- 7 *Id* at 17. By 1988 the median age had started to rise again (to 40) as the new entrants from the expansive 60s reached middle age.
- 8 *Id* at 18, citing ABA, 1991 Annual Review of Legal Education. See generally ABA Commission on Women in the Profession, *Women and the ABA — A History of Women’s Involvement in the American Bar Association, 1965–1989: Research Report on Women’s Participation* (Chicago: ABA Press, 1989).
- 9 *Id* at 19–20.
- 10 *Id* at 20–21. See generally, J Taber et al, Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates (1988) 40 *Stan L Rev* 1209.
- 11 *Id* ABA Task Force Report at 22.
- 12 *Id* at 27.
- 13 *Id* at 25.
- 14 *Id* at 29–35. Most of this growth has occurred during the 1970s and 1980s. Indeed, in the last few years there has been an increase in the number of lawyer engaging in solo or small firm practice. This in part reflects greater specialisation; and in part the failure of some new lawyers to find other employment.
- 15 *Id* at 17.
- 16 *Id* at 41, “A 1991 survey of the State Bar of California found that three-quarters of the lawyers spent at least 50% of their time in one area of concentration, and more than half of the lawyers limited their practice to three or fewer areas of law.”
- 17 *Id* at 44, “As of August 1990, the ABA Standing Committee on Specialization had promulgated Model Standards for Specialization in 24 specialties . . . As of April 1991, 15 States had specialization plans in effect for the certification of from one to 25 specialties” (at 44–45).
- 18 *Id* at 46.
- 19 *Id* at 47–70.
- 20 *Id* at 48.
- 21 *Id* at 85.
- 22 *Id* at 88–95. “Today the largest industrial companies identified by the National Law Journal have law departments that range in size from no in-house lawyers to 446 lawyers” (at 93, citing July 8, 1991 supplement, National Law Journal, The NJL Client List) .
- 23 *Id* at 95–102. “According to the 1987 Census of Governments, there were 83,237 governments in the United States — all of which require at least some legal services” (at 95–96).
- 24 *Id* at 104–05.
- 25 *Id* at 105–06.
- 26 *Id* at 106.
- 27 *Id* at 108.
- 28 *Id* at 113 “The magnitude of the present law school enterprise and of the role it plays today in preparing lawyers for practice is highlighted by a contrasting glimpse of the past. From 1829 to 1845 Joseph Story constituted half of the

entire faculty of Harvard Law School at the same time as he served as a justice of the U.S. Supreme Court” (at 112–13.) See generally, WA Seavey, “The Association of American Law Schools in Retrospect” (1950) 3 *Journal of Legal Education* 153.

29 The ABA developed the first national code of conduct in 1908, although several States had adopted state-wide codes of conduct for 20 years prior to that date. (ABA Task Force Report, *supra* note 1 at 109.)

30 *Id* at 116–17. There are 29,171 judges in the States and Territories plus 2,143 federal judicial officers (at 115–116).

31 *Id* at 116.

32 For example this course of action was adopted by three US states during the Andrew Jackson era. *Id* at 104.

33 *Id* at 117, citing TM Alpert, “The Inherent Power of the Courts to Regulate the Practice of the law: An Historical Analysis” (1983) 32 *Buff L Rev* 525.

34 *Id* at 119, citing *Bates v State Bar of Arizona*, (1977) 433 US 350; *In re RMJ*, (1982) 455 US 191 .

35 *Id*, citing *NAACP v Button*, (1963) 371 US 415; *Brotherhood of RR Trainmen v Virginia ex rel Va State Bar*, (1964) 377 US 1; *United Mine Workers v Illinois State Bar Association*, (1967) 389 US 217; *United Transport Union v State Bar*, (1971) 401 US 576 .

36 *Id* at 119, citing *Goldfarb v Virginia State Bar Assn*, (1975) 421 US 773.

37 *Id* at 119, referring to the Preamble to the ABA Model Rules

38 *Id* at 120.

39 *Id* at 138–141.

40 *Id* at 225.

41 *Id*.

42 *Id* at 236, citing American Bar Association Task Force Report on Professional Competence: Final Report and Recommendations (Illinois: ABA, 1983).

43 *Id* at 327–328.

44 *Id* at 329.

45 *Id*.

46 *Id* at 330.

47 *Id* at 331.

48 *Id* at 332.

49 *Id*.

50 *Id* at 333.

51 *Id* at 333–334.

52 *Id* at 304.

53 *Id* at 304.

54 *Id* at 274.

55 *Id*.

56 *Id* at 275, citing J P White, “Lawyer Competency and the Law School Curriculum: An Opportunity for Cooperation” (1984) 53 *The Bar Examiner* 4 at 7–8 “Not only are law schools quite properly experimenting in teaching techniques but they are experimenting in curriculum content... [P]ublic authority should not dictate curriculum content but by examination should determine that the content of the applicant’s education is such that, upon admission he [or she] will be able to adequately serve the public”.

57 *Id* 281 (Alaska, California and Colorado).

58 *Id* at 280, citing J M Feldman & M M Mac Neille, “Certifying Professional Competence: The Alaska Experiment” (1983) 52 *The Bar Examiner* 1.

- ⁵⁹ *Id* at 281, citing J D Smith, Performance Testing in California, 1983–1989, (1989) 58 *The Bar Examiner* 1.
- ⁶⁰ *Id* at 282.
- ⁶¹ *Id* at 283.
- ⁶² *Id* at 284.
- ⁶³ *Id* at 285.
- ⁶⁴ *Id* at 305–312.
- ⁶⁵ *Id* at 312.
- ⁶⁶ *Id*.
- ⁶⁷ *Id* at 314–316.
- ⁶⁸ Note that this list is obviously self-selecting and incomplete. Neither does it include private in-house training.
- ⁶⁹ *Id* at 314.
- ⁷⁰ *Id* at 316.
- ⁷¹ *Id*, citing American Law Institute-American Bar Association Committee on Continuing Professional Education, *CLE and the Lawyer's Responsibilities in an Evolving Profession: The Report on the Arden House III Conference*, November 13–16, 1987. Other Arden House Conferences on CLE were held in 1958 and 1963.
- ⁷² *Id* at 321.
- ⁷³ *Id*.
- ⁷⁴ *Id* at 321–22.
- ⁷⁵ See for example, H Lewis-Ruttley, The Internationalisation of Legal Practice in Commonwealth Asia and Australasia, paper presented at the Commonwealth Legal Education Association Conference on Emerging Educational Challenges for Law in Commonwealth Asia and Australasia: The Implications for Education. University of Hong Kong, April 10–12, 1992.
- ⁷⁶ W Twining, Preparing Lawyers for the Twenty-First Century (1992) 3(1) *Legal Education Review* 1 at 12.
- ⁷⁷ A similar point was recently made by Helen Gamble in her paper, The Responsiveness of the Legal System to Change, paper delivered to the 47th Annual ALTA Conference, Brisbane, July 9–12 1992.