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THE MEANING OF QUALITY

STEVEN R. SMITH*

Understanding the qualities that make a great lawyer is critical to developing excellence in legal education. Legal education is enormously important in establishing the level of competency and the professional orientation of lawyers as they enter the profession. It is essential, therefore, for legal education to have a clear sense of the qualities that make excellent lawyers as it considers what constitutes high-quality legal education.

This essay considers the qualities that constitute excellent lawyers in any society. It thereby suggests the qualities that law schools should seek to ensure that their graduates possess as they leave law schools and enter the practice of law.

Legal education ultimately exists to serve the public. Legal education's immediate clients, of course, are its students. The purpose of professional education, however, extends beyond students to those whom the students will ultimately serve.

The quality of lawyers is critical to a society. Lawyers are ultimately responsible for the administration and structure of justice. High-quality lawyers will, therefore, contribute to an improved system of justice. The technical competence of lawyers and ability to creatively structure transactions contributes enormously to the quality of life of individual members of society and to the efficiency of the society and economic activity within the society.

There have been numerous discussions of the qualities a great lawyer has. The various descriptions of fine lawyers contain five common elements that extend across countries and a wide variety of legal systems. Those are the qualities of (1) technical competence, (2) creative problem solving, (3) professionalism and commitment, (4) a sense of justice, and (5) the ability to learn.

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TECHNICAL COMPETENCE

A lawyer must first be able to competently perform the various tasks necessary to serve clients. Common examples of areas in which technical competence is essential include the ability to ascertain and use facts, effectively use oral and written communication skills, find and understand the law, engage in successful negotiation, draft good legal documents, engage competently in litigation and administrative procedures, and organize transactions and practice.

The areas in which a lawyer needs to be competent vary from one type of legal practice to another and from one country to another. In the United States, one of the things that makes educating new lawyers so difficult is that legal education is considered to be a generalist form of education, and it is not possible for most students to become competent in a narrow slice of the profession while in law school. The result is that legal education must try to give students the fundamentals in a wide range of skills that make for technical competence.

Mere technical competence, however, is not nearly enough to qualify someone as a lawyer. Such competence gives the attorney the tools effectively to achieve or implement legal strategies. Those tools, however, do not provide the basis for helping clients to decide what they want to accomplish and where they want to go. That requires additional qualities.

CREATIVE PROBLEM SOLVING

Clients generally go to lawyers because the clients have problems that have some aspect of a legal issue or because they want to avoid legal problems. Lawyers are thus ultimately problem-solvers. This is the traditional role of lawyer as “counselor.” It is, however, a commonly neglected aspect of legal education.

Problems, essentially, are things that interfere with someone achieving a goal. A good lawyer must, therefore, begin as a problem-solver by helping clients understand and clarify their goals. This can be much more difficult than it appears, because many clients come to lawyers with a proposed solution to a legal problem they have “diagnosed” themselves. The client who sees a lawyer and says, “My mental health professional told my boss about my therapy, and I want you to sue the bastard,” probably does not understand whether or not he has a good legal case against the therapist. More importantly, the

client probably has no understanding of the consequences of placing his therapy and mental state in litigation. The lawyer who very competently begins the process of checking the facts, determining a cause of action, and filing a well-written lawsuit may be technically competent but is failing the client.

It would be much better for the lawyer also to have undertaken a process of helping the client think about the client's goals, to consider alternatives for reaching the goals, and finally to select processes that will effectively and efficiently help the client achieve the goals. In a breach of confidentiality case, for example, litigation may very well not serve the interests or goals of the client.

Good lawyers also perform the important role of helping clients avoid problems. Preventive law is an increasingly important part of the job of any good lawyer. Helping clients avoid legal problems is much more efficient than solving the problem once it has arisen.

An essential element of the good lawyer who is a problem-solving counselor is the ability to express compassion and caring for the client. This is part of the lawyer's working to promote the values and goals of the client. It is also often a critical element in helping the client consider and accurately describe the client's objectives when faced with a legal problem.

Good lawyers are also creative in the way they serve clients. Having determined what the client's goals are, a good lawyer should consider new ways of achieving those goals that may be more effective or efficient. In many instances, of course, the traditional or common approach will be adequate. It is the ability of the attorney to find creative ways of addressing problems, or of avoiding them, that makes lawyers especially valuable to their clients.

It is unfortunate that in many countries lawyers are seen not as problem-solvers, but as troublemakers. An emphasis in the legal profession on our role as problem-solvers will not only improve the place of the profession in the mind of the public, but also help us focus on the most helpful, meaningful, and satisfying part of our profession.

The first two qualities of a fine lawyer, technical competence and creative problem-solving, help ensure that the lawyer is able to serve a client by considering the client's goals and moving efficiently and effectively to meet those goals. It is not enough, however, to create an excellent lawyer. Rather, the lawyer must also be able to work within and improve the legal system and contribute to society. The next three qualities contribute to those ends.

PROFESSIONALISM AND COMMITMENT

The legal profession in any country can continue as an effective and respected entity to serve the public only if it establishes and maintains a set of professional expectations and standards to which the members of the profession adhere. A necessary element of professionalism is an established and enforced code of ethics or professional responsibility. One function of legal education is to help new lawyers become accustomed to and committed to honoring the code of ethics of the profession.

Adhering to minimal rules of ethics is not enough for good attorneys. They also must be committed to improving the profession. That means treating one another with civility and respect. It also means contributing to professional organizations, promoting good legal education, and participating in educating the public about the nature of the law and the importance of the rule of law.

Successfully developing a sense of professionalism and commitment to the profession in new lawyers requires an acculturation while in law school. More than that, it requires an openness to continue the process of understanding and participating in the profession after law school.

A SENSE OF JUSTICE

Central to the legal profession is the trust any society places in it to see to the promotion of justice within the society. Any good lawyer must take seriously the responsibility that trust imposes on the profession. A lawyer must, therefore, contribute to a more just society and help improve the administration of justice. A good lawyer must not only seek justice for individual clients, but also be concerned about the structure and success of the legal system in advancing the highest goals of fairness, efficiency, equality, and human rights.

No well-educated lawyer should enter the profession without a sensitivity and commitment to these ideals. Beyond a personal commitment, a good lawyer should also be prepared to engage non-lawyers in a discussion of the goals of the law and the commitment to improving society's success in promoting those high ideals.

Law schools are expected to bring students into the profession. Unlike medicine, law does not have a post-professional degree residency training program. Much of the professionalism in medicine can be provided through the residency program after medical school. There is no such period in the United States, so that obligation has

increasingly fallen to law schools.

ABILITY TO LEARN

It is commonly said that the law is a learned profession. Even more importantly, it is a “learning” profession. No matter how effective a law school is, it can only begin the process of legal education because no attorney has learned the law at the time of graduation. The law, the legal system, and the needs of society and clients will change dramatically throughout the many years of a lawyer’s career. The lawyer must be able to change and to be flexible and to deal with the many changes during the time the lawyer is practicing. In addition, as an attorney represents new clients, the areas of the law the attorney must understand increase. The ability to learn new legal principles and to stay abreast of current developments through self-learning is an essential element for the competent attorney.

A good attorney must have a variety of techniques for additional education throughout the attorney’s career. Continuing legal education programs, discussions with colleagues, careful reading, bar association work, and work with other professionals are examples of the kinds of educational opportunities a good attorney must take advantage of and be prepared to use. Perhaps more important than the techniques of legal research and scholarship that any good attorney must have is the desire to continue to learn and a continuing fascination with new legal developments.

Law schools can do a great deal to engender the expectation in their students that legal education will be a lifetime undertaking. The failure to emphasize this to lawyers threatens even the most competent new graduate with rapid obsolescence.

The magnitude of the job of legal education is apparent by considering these five qualities of effective lawyers: technical competence, creative problem solving, professionalism and commitment, a sense of justice, and the ability to learn. Helping students become proficient at any one of these five would be an enormous undertaking for programs that last usually only three or four years. Trying to accomplish all five simultaneously is somewhat overwhelming.

As the critics of legal education have pointed out, law schools do not do an excellent job in completing all of the tasks of instruction that are set out for it in educating fine lawyers. Inevitably, legal education faces trade-offs between emphasizing any one of these

areas to the exclusion of others. Some balance in selecting the areas of study for students is, of course, essential. Wonderfully technically competent lawyers who are not problem-solvers or committed to professionalism are technocrats who can do clients as much harm as good. Law schools must seek to educate much more complete professionals.

The enormity of the task of educating good lawyers also emphasizes the fact that the legal profession and legal education should hold law schools to high standards. We should not accept legal education that is slipshod, that cuts corners, or that seeks to prepare students only for the first few months or years of practice. We should insist that law schools are adequately staffed with excellent faculty, that library resources are generous, that classrooms are rigorous and engaging, and that high standards are expected from law students from the minute they begin law school and thereby become part of legal profession.

Lawyers of high quality can improve the quality of justice in a society, provide excellent service to individual clients, improve the efficiency of an economy, and contribute to the welfare of the society. To serve these purposes, however, a lawyer must be well educated. Through high-quality legal education law schools contribute to the improvement of the legal profession and society.