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WHY DON'T LAW SCHOOLS TEACH LAW STUDENTS HOW TO TRY LAWSUITS?

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HELEN POUGIALES ROLAND‡

The current interpretation of the American Bar Association standards for accreditation of law schools allows accredited law schools to offer trial skills courses as electives rather than required courses. Studies commissioned by federal judges and the American Bar Association have identified advocacy deficiencies resulting, in part, from this interpretation and have recommended various solutions for those deficiencies in trial skills. The authors of this Article argue that, in order to remedy and prevent further deficiencies, the American Bar Association must include a trial skills course requirement in its accreditation standards.

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Introduction

The majority of law school faculties view law school training only as an academic intellectual pursuit and do not teach law students how to try lawsuits. But lawyers and judges overwhelmingly take issue and advocate that it is the obligation of law schools to balance their curricula with courses in trial advocacy and other practical skills. The skills acquired in these courses are essential to graduating qualified, fully competent lawyers.

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The role of law schools in providing practical training to students has been debated for years. In the past decade, researchers have accumulated abundant evidence supporting the need for skills training to produce competent trial advocates. Study upon study has concluded that the best forum for that instruction is the law schools. While it is no longer seriously contended that skills training has no place in law schools, law schools continue to graduate students without adequate training in trial advocacy. The American Bar Association can ensure that all law students graduate with adequate skills training by requiring such training in its standards for approval of law schools.

This Article gives a brief history of the basic training of lawyers in America, discusses the arguments on each side of the present controversy, and relates the longtime unsuccessful efforts of the bench and bar to get law schools to teach trial advocacy and other skills courses. The Article then presents the authors' opinion that the typical professional law teacher's arguments resisting an ABA sponsored trial advocacy standard are without merit, and that adoption of such a standard is essential to achieving improved trial advocacy training and enhancing lawyer competency.

I. HISTORICAL OVERVIEW

The origins of the debate on practical training in the law schools date back to the nineteenth century. Changes in legal training during the 1800's illustrate the clear shift in emphasis.

1. The practitioners' side of the debate was aptly described by one author as follows: "The bar was irritated by an apparent reluctance on the part of leading schools to be concerned with those skills that the profession regarded as important; leaders of the profession also felt that the broadening of legal education had gone too far." R. Stevens, Law School: Legal Education in America from the 1850s to the 1980s 238 (1983)(footnote omitted). On the other side of the debate, professional law instructors viewed the requirement of skills training as reducing law schools to trade schools. Id. at 239.

2. See generally infra notes 29-51 and accompanying text.

3. Id.

4. See Conference on Legal Education in the 1980s 67-72 (1982)(remarks by Norman Redlich on the need for law schools to take an active role in developing trial skills). Since 1974, the American Bar Association Standards for Approval of Law Schools have required that law schools "offer instruction in professional skills." Standards for Approval of Law Schools and Interpretations § 302(a)(iii) (Sept. 1986) [hereinafter ABA Standards]. For the complete text and interpretations of Standard 302, see infra note 54.
from practical to theoretical legal training. The shift was particularly marked in the diminished role of the experienced attorney as instructor. This historical overview highlights certain developments in legal training to provide a perspective on the current debate.

Legal education in the United States originated in practitioners' offices, where students learned the law through apprenticeships. Some period of apprenticeship was required by most states before lawyers could be admitted to practice before the courts. The training of attorneys entailed "reading the law" under the guidance of an established attorney or by studying law books and statutes on their own.

Apprenticeships were the sole method of legal training until the universities slowly began to provide legal education in the 1800's. The universities accepted applicants without screening for intelligence or other relevant factors, however, and the accepted method of legal training continued to be the office-apprenticeship through the 1800's.

The legal training of the first half of the nineteenth century was reflective of the times: Jacksonian "democracy" perpetuated the belief that any person should be allowed to enter the profession of his choosing, regardless of qualifications. Consequently, one of the few standards of the legal profession, the requirement of an apprenticeship, was either reduced or abolished by the states. This egalitarian attitude resulted in a

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6. See R. Stevens, supra note 1, at 3.
7. See Devitt, Langdell's Disease: The Case Against the Case Method, Nat'l L. J., Apr. 21, 1980, at 15. A common example of the self-trained attorney is Abraham Lincoln who became a lawyer simply by borrowing the few available legal texts and studying them. Id.
8. Some of the offices in which apprenticeships were provided became private colleges. Litchfield Law School in Connecticut, established in 1784, was the most famous. "There . . . a course of studies based on Blackstone, but adapted to the American scene, attracted students from every state in the new nation . . . ." R. Stevens, supra note 1, at 3 (footnote omitted).
9. See A. Harno, supra note 5, at 48-49. For example, "Harvard after 1849 had a requirement that an applicant for law study must be a person of good moral character and nineteen years of age." Id. at 51 (footnote omitted).
10. Id. at 39-40.
11. See R. Stevens, supra note 1, at 7. Statistics illustrate this reduced regulation of the profession:

In 1800, fourteen out of nineteen jurisdictions had required a definitive period of apprenticeship. By 1840, it was required by not more than eleven out of thirty jurisdictions. By 1860, it was required in only nine of thirty-

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legal profession in which lawyers with marginal abilities were common and, in all likelihood, predominated.

The year 1870 represents a turning point in the education of American lawyers. In that year, Christopher Columbus Langdell was named dean of Harvard Law School.12 During his tenure, Langdell instituted fundamental changes in the education of lawyers. His driving ambition was the elevation of law schools, particularly Harvard, to the level of academic prestige enjoyed by other graduate schools. Dean Langdell viewed the law as a science and believed "that all the available materials of that science are contained in printed books."13 He developed the "case method" of law school teaching to implement his views.14

The case method, as we all know, is designed to find the law through case analyses. It is normally combined with a Socratic teaching style, the end objective being to refine the analytical and intellectual skills of the student.15 Langdell thus sought to elevate intellectualism in legal training, and at the same time, to eliminate the more "practical" aspects of legal training, particularly skills training. For example, he believed law school professors need not have practical legal backgrounds, but rather law schools should breed professors of law by the same gradual process by which competent teachers are trained in other departments of the university.16

Dean Langdell’s views had a most fundamental, and generally positive, effect on the legal profession. By increasing the emphasis on intellectual ability and disciplined mental train-

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9. Id. at 7-8 (footnotes omitted).
10. R. Stevens, supra note 1, at 35.
11. A. Harno, supra note 5, at 58.
13. See generally R. Stevens, supra note 1, at 51-72.
14. In Langdell’s words:
A teacher of law should be a person who accompanies his pupils on a road which is new to them, but with which he is well acquainted from having often traveled it before. What qualifies a person, therefore, to teach law, is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law.
15. Id. at 38.
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ing, a significantly higher caliber of attorney emerged, and the profession gradually gained the esteem and respect of the public. Moreover, these higher caliber attorneys assumed a greater responsibility for organizing the profession and, consequently, regulating the standards for legal practice.¹⁷

The move away from apprenticeships and toward law school was generally welcomed by the profession. Members of the bar, however, were not advocating that all three years of training should be spent in law school. “The leadership of the bar was fighting for something much more fundamental: a generalized requirement of apprenticeship, part of which might be ‘served’ in law school, and an effective bar examination.”¹⁸ Thus, the Langdellian concept of legal education was not immediately accepted in its entirety, and, until the turn of the century, most members of the legal profession had received only apprenticeship training.¹⁹

By 1920, the place of law schools and the case method in legal education was firmly established.²⁰ In that year, the ABA appointed the Committee of Legal Education which proposed the requirements of a two year college education, a minimum of three years of law study, and an adequate library and full-time faculty at the law schools.²¹ It was also proposed that the ABA empower the Council on Legal Education and Admission to the Bar with the ability to accredit law schools.²² Regulation and standardization of legal education had become a priority, and the Langdellian method of instruction a reality.

Despite the success and acceptance of the case method, it has received criticism from its inception.²³ The underlying criticism is that modern law school training, emphasizing the case method, is too theoretical and “bookish,” and the typical professional law teacher is ill-prepared through training and experience to teach others how to practice law or try a lawsuit. In glorifying theory over practice, modern law school training

¹⁷. See generally A. Harno, supra note 5, at 71-72 (discussing effect of improved standards for legal education on attitude of bar).
¹⁸. R. Stevens, supra note 1, at 25.
¹⁹. In fact, as late as 1951, thirty-five states allowed law office practice in lieu of law school. By 1980, only four states had such provisions while others allowed a mixture of school and practice. Id. at 255 n.71.
²⁰. Id. at 123.
²¹. See Special Committee Report, supra note 14, at 4.
²². Id.
²³. R. Stevens, supra note 1, at 57-59.

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fuels complaints of lawyers' incompetence to plan and try law suits.

The criticism of case method legal training spurred a movement to improve law school training. In the 1960's, clinical legal education received special attention as a way to bridge the gap between law school training and practice. In the 1970's, the focus of the criticism turned to the lack of practical skills training within the four walls of the law schools. The following section describes the extensive research underlying the push for improvements in practical training.

II. THE NEED FOR IMPROVED TRAINING OF TRIAL ADVOCATES

A major thrust in the movement to improve the competence of the trial bar came in 1973, when then Chief Justice Warren E. Burger criticized legal education as a cause of inadequate advocacy. The Chief Justice contended that one-third to one-half of American trial attorneys were unqualified. Many members of the bench and bar informally agreed with him, leading to in-depth research of the purported problem.

The first concerted effort to study the problem of inadequate advocacy was initiated by then Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit. He shared the Chief Justice's view of the inadequate performance of trial advocates. Judge Kaufman appointed a commit-

24. See Special Committee Report, supra note 14, at 8-9 (criticism that case method was too theoretical lead to clinical programs designed to provide a more realistic experience for the student).

25. Id. at 9 (noting differences between modern clinical programs and apprenticeships).

26. The Chief Justice's criticism was voiced in his John F. Sonnet Memorial Lecture of 1973. Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?, 42 Fordham L. Rev. 227, 232 (1973). In the Chief Justice's view: "Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer's function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy." Id.

27. Footlick, Lawyers on Trial, Newsweek, Dec. 11, 1978, at 98.

28. Id.


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A committee comprised of trial lawyers, a federal district judge, a law school dean, and two law school professors to examine the quality of advocacy in the courts of the Second Circuit and to recommend improvements.31

Under the chairmanship of New York attorney Robert L. Clare, Jr., the committee filed its report in 1975. Based on interviews with judges, testimony at public hearings, and other evidence, the Clare Committee concluded that there was a lack of competent trial advocates in the federal courts directly attributable to a lack of training in legal skills.32 The committee's recommendations included a requirement that an applicant for admission to practice in the United States district courts demonstrate, among other things, that he or she had completed courses, either in law school or in a continuing legal education program, in five required subjects,33 including trial advocacy, and had either participated in the preparation of four trials or observed six trials.34 Completion of the recommendations and admissions were to be supervised by a three-member committee.35

In the midst of considerable discussion and debate on the "Clare Report,"36 Chief Justice Burger, in September 1976,

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31. Qualifications for Practice, supra note 29, at 161.
32. Id. at 164.
33. The Committee is of the opinion that all of the evidence demonstrates that incompetence exists, attributable to lack of proper training, and that the public is deceived when the court admits unqualified attorneys to practice. Such admission carries the implied representation that the court is vouching for the lawyer's adequacy to try cases. Id. at 166.
34. See Pedrick & Frank, Trial Incompetence: Questioning the Clare Cure, 12 TRIAL 47, 59 (Mar. 1976) (citing address by the Honorable Marvin E. Frankel, United States District Court for the Southern District of New York (Dec. 30, 1975)); Association of American Law Schools, Report on the Clare Committee Proposal for Rules of Admission to the Federal Courts in the Second Circuit (1976); see also Weinstein, Proper and Improper Interactions Between Bench and Law School: Law Student Practice, Law Student Clerk-
appointed a committee of the United States Judicial Conference to investigate the quality of trial advocacy in the federal courts, and, if deficiencies were found, to recommend how they could be remedied.\textsuperscript{37} That broad-scaled investigation entailed three years of work by a twenty-four member committee of judges, lawyers, law school deans, and law students, chaired by Judge Edward J. Devitt, then Chief United States District Judge for the District of Minnesota.\textsuperscript{38}

In conjunction with the Federal Judicial Center,\textsuperscript{39} the Devitt Committee researched the quality of trial advocacy in the federal courts using surveys, questionnaires, and public hearings.\textsuperscript{40} The committee determined, in brief, that one in four performances by trial attorneys in the courts were less than "good."\textsuperscript{41} The Devitt Committee's research confirmed the findings of the Clare Committee that lawyer deficiency was primarily due to a lack of training in how to plan and try a lawsuit.\textsuperscript{42} Based on this evidence, the Devitt Committee unanimously concluded that there was a serious problem with the quality of trial advocacy in the federal courts, and that steps should be taken to solve the problem.\textsuperscript{43}

The committee further found that only about one law student in three was able to obtain trial skills training while in law


\textsuperscript{40} See Tentative Recommendations, supra note 37, at 193; Final Report, supra note 38, at 219.

\textsuperscript{41} Final Report, supra note 38, at 219.

\textsuperscript{42} Id. at 218-19.

\textsuperscript{43} Id. at 220.
school. As a result of the unavailability of training, the committee recommended that law schools provide trial advocacy courses to all students who wanted the training. The committee urged the ABA to amend its accreditation standards to require the teaching of trial skills courses, including simulated trials and instruction by experienced litigators, in all of the ABA approved law schools. These important recommendations were unanimously approved by the Judicial Conference at its September 1979 session.

In response to the attention focused on deficiencies in legal education as a principal source of lawyer incompetency, the ABA Section of Legal Education and Admissions to the Bar appointed its own committee, the Cramton Task Force, to evaluate lawyer performance and its relation to legal education. Its stated objective was "to illuminate the underlying

44. Id. at 229.
45. Id.
46. Id. at 229-32. In the Devitt Committee's view: "When the profession identifies a significant deficiency in the education of lawyers, as this committee, the A.B.A. Task Force, and others have done, the logical solution is for the A.B.A. to amend its accreditation standards to establish that law schools must provide quality trial advocacy training to their students." Id. at 229.
47. Tomlinson, Opening Statement, 13 Litigation 1, 1 (1986). The conference also approved several other significant recommendations of the Devitt Committee, including a proposal that a number of cooperating pilot districts experiment with nondisciplinary peer review committees, a federal bar examination, and an experience requirement.

Thirteen district courts implemented pilot programs, adopting one or more of the three program elements. Id. A committee headed by Judge James L. King of the U.S. District Court for the Southern District of Florida was appointed by the Judicial Conference to oversee and monitor these pilot programs. Id. After the programs had operated for three years, the King Committee evaluated their effectiveness. Id.

Based on its evaluation of the programs, the committee recommended the continued use of federal practice examinations. Id. at 65. Although the committee had insufficient data to fully evaluate the trial-experience requirement of the Devitt Committee, the majority of the committee recommended continued use of it and suggested some observation of or participation in a jury trial be incorporated into the experience requirement. Id. The King Committee concluded that the Judicial Conference should recommend to the district courts adoption of the programs recommended by the Devitt and King Committees and used by the pilot courts to improve trial advocacy, and should assign a committee to continue monitoring the district court trial advocacy programs. See id. at 66. The Judicial Conference accepted all of the King Committee recommendations in September 1985. Id.

48. Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools of the ABA Section of Legal Education and Admissions to the Bar iii-v (1979)[hereinafter Lawyer Competency].

As early as 1973, the ABA created the "Special Committee for a Study of Legal Education" to conduct studies to evaluate legal education. In its final report, it con-
issues and to make constructive proposals for the improvement of legal education." 49

The final report of the task force, filed with the Section in June 1979, 50 made eight specific recommendations addressed to the law schools' educational programs. 51 The Cramton Task Force, concurring with the Devitt Committee, recommended that law schools offer instruction in litigation skills to all students desiring it, and that law schools make more extensive instructional use of experienced and able lawyers and judges. 52

III. THE REQUIREMENT OF TRIAL ADVOCACY TRAINING

Notwithstanding the extensive and scholarly study of the relationship between trial lawyer competency and litigation skills training, and notwithstanding the consensus of the Clare, Devitt, and Cramton Committees on the need for law school training in trial practice taught by experienced trial lawyers, there has been no substantial change in law school offerings or attitudes on the subject. Most changes and additions made in the past ten years have been minor and insignificant. The plain fact is that most professional law teachers, nurtured in the "Langdellian tradition" are opposed to such change.

The efforts of the bench and bar to improve trial lawyer competency through better law school training have been frustrated by professional law teachers. In 1980, the ABA Section of Legal Education and Admissions to the Bar, largely peopled and influenced by professional law teachers, voted down needful modernizing changes in law school offerings which had been long sought by the bar. 53 Its rejection of an accreditation standard requiring law schools to offer courses in trial advocacy was the equivalent of the ABA's rejection of the Clare, Devitt, and Cramton Committees' recommendations.

The ABA standards still do not require trial advocacy train-
ing. Rather than specifically requiring instruction in trial advocacy, the current Standard 302 simply "places its emphasis on creating law school 'aspirations' and on encouraging" law schools to include trial advocacy training in the curriculum. The standard requires law schools to "offer instruction in professional skills," leaving interpretation of the standard to the

54. Standard 302 of the American Bar Association Standards for Approval of Law Schools provides that:

**Standard 302**

(a) The law school shall:
   (i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;
   (ii) offer to all students at least one rigorous writing experience;
   (iii) offer instruction in professional skills;
   (iv) require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Model Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.

(b) The law school may not offer to its students, for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.

**Interpretations**

**Standard 302**

Interpretation 1 of 302(a)(ii): There is no ABA ruling that a student requesting enrollment in an advocacy course must be admitted to that course. The Standard in question states merely that the law school shall offer training in professional skills. June, 1974.

Interpretation 2 of 302(a)(ii): This section requires training in professional skills. To which of the many professional skills the curriculum will give special attention is left to the individual schools. Therefore, it is incorrect to say that this Standard requires an approved school to offer a course in Trial Practice. The only subject matter in which approved law schools must provide instruction is in professional responsibility. August, 1975.

Interpretation of 302(a)(iii): A law school's failure to offer adequate training in professional skills, whether through clinics or otherwise, violates Standard 302(a)(iii). May, 1980.

Interpretation of Standard 302(a)(iii): Such instruction need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in skills related to the various responsibilities which lawyers are called upon to meet, utilizing the strengths and resources available to the law school.

Thoughtful professional studies have urged that trial and appellate advocacy, counseling, interviewing, negotiating, and drafting be included in such programs. August, 1981.

Interpretation of 302 and 303: The academic program of a law school violates Standards 302 and 303 when the program of study lacks fundamental core subjects, and provides inadequate training in writing, research, study techniques, and trial tactics and provides very few seminars and small class courses. August, 1978

ABA STANDARDS, supra note 4, Standard 302.

55. Devitt & Sacks, supra note 53; see supra note 54.

56. See supra note 54 (interpretation of Standard 302).
creative minds of academicians.57

A comparison of law school curricula in 1974-75 and 1984-86 reveals that the percentage of clinical and professional skills course electives in ABA approved schools has not changed in the last decade.58 In both years, the courses comprised the highest percentage of the average law school’s elective curriculum.59 Despite these impressive course listings, reliable research by the Federal Judicial Center and the Devitt Committee shows that only one-third of law students were able to obtain trial advocacy training in law schools in the late 1970’s.60 Although no comparable figure is available for 1986, current data indicates that only 7.4% of the ABA approved law schools required a “trial advocacy” course, and only a slightly higher percentage, 13.1%, required a “trial and appellate advocacy” course.61 These statistics indicate that the current ABA accreditation standard is inadequate. The recommendations of the Clare, Devitt, and Cramton Committees are not being followed because the incentive for change is lacking.62

The refusal of law school faculties to respond to the efforts of the bench and bar is contrary to the overwhelmingly expressed needs of the bench and bar.63 In an ABA Journal Law Poll of a cross-section of the profession, 83% favored offering

57. See id. (complete text of current standard and interpretations). A recent study has concluded that the primary impact of Standard 302 has been a substantial increase in required courses in professional responsibility. W. Powers, A STUDY OF CONTEMPORARY LAW SCHOOL CURRICULA 69-70 (1986). This is not surprising given the explicit language in Standard 302(a)(iv) requiring instruction in the “history, goals, structure and responsibilities of the profession and its members.”

58. W. Powers, supra note 57, at 70.

59. Id.

60. See Final Report, supra note 38, at 229 n.25.


62. Clinical skills education is a neglected stepchild of most law schools today. The Ford Foundation made grants totaling ten million dollars in the 1970’s in an attempt to encourage law faculties to offer these much demanded lawyering skills courses. The effort was aborted with little dent on the century-old law school emphasis on “book learning.” Devitt & Sacks, supra note 53.

The authors mailed a questionnaire to the three Minnesota law schools for current data on their legal writing, trial advocacy and clinical courses. One of the three schools, William Mitchell College of Law, requires trial advocacy while the other two, Hamline and the University of Minnesota, offer a trial advocacy course. All of the schools enlist trained litigators to teach the courses. In some courses taught at William Mitchell, students are required to observe actual litigation; otherwise none of the schools require that students observe actual litigation before graduation. (results of survey on file in William Mitchell Law Review office).

63. See generally Final Report, supra note 38, at 228-29. The Honorable Joseph S.
trial advocacy courses to law students.\textsuperscript{64} Law alumni of many schools, including Harvard, Yale, Michigan and Stanford, responded to surveys by their alumni offices that the principal deficiency of their schooling was lack of training in advocacy and other practical subjects such as drafting, counseling, and negotiation.\textsuperscript{65} All recent presidents of the ABA have urged more and better law school training in these subjects.\textsuperscript{66}

Notwithstanding the overwhelming efforts for change, it has not come about because most professional law professors oppose it. "We are not running a trade school," they say. Many professional law teachers have had little, if any, practical legal experience and just do not know or appreciate the great need for skills training. But judges and practicing lawyers do know.\textsuperscript{67} Absent skills training, the lawyer is only partly quali-

Lord, former Chief Judge of the Eastern District of Pennsylvania, expressed his sentiments as follows:

\begin{quote}
I have long been a believer that the law schools are turning out the equivalent of doctors who know the location of muscles, nerves, etc. from textbooks, but who haven't the slightest practical feeling for treating any of them. Law school training should require clinical experience and a course devoted to courtroom observation. So strongly do I feel about this that I think that graduates of a law school which lacks such a course, should not be accredited for the bar examination.
\end{quote}

\textit{Id.} at 229.

The authors conducted a survey of the United States District Court judges in Minnesota to elicit their views on the quality of advocacy in their courts. The five judges, not including Judge Devitt, responded that an average of 33\% of the legal briefs and memoranda submitted by counsel were below average or poor. On the quality of oral advocacy, the judges responded that an average of 29\% of the advocates were below average or poor. (results of survey on file in William Mitchell Law Review office).

\textsuperscript{64} See Law Poll - \textit{What the Legal Profession Thinks}, 64 A.B.A. J. 832 (1978).

\textsuperscript{65} Final Report, \textit{supra} note 38, at 228 n. 24; see, \textit{e.g.}, Kelly, \textit{Education for Lawyer Competency: A Proposal for Curricular Reform}, 18 NEW ENG. L. REV. 607, 612-13 (1983)(reviewing results of survey conducted among alumni from various schools).

\textsuperscript{66} Devitt & Sacks, \textit{supra} note 53; see, \textit{e.g.}, \textit{CONFERENCE ON LEGAL EDUCATION IN THE 1980s} 63 (ABA) (1982) (remarks by David Brink on need for courses devoted to practical skills).

\textsuperscript{67} Chief Justice Burger firmly believes in the need for law teachers to have practical training. In the words of his former law clerk, Kenneth W. Starr, now Judge of the United States Court of Appeals for the District of Columbia Circuit:

\begin{quote}
[The Chief Justice] had long championed a 'five-year rule.' He felt that law clerks should not leave the Court and go immediately into teaching, but should occupy themselves in the profession (including clerking) for at least five years before entering the Academy. The Chief thought it curious that those who never practiced would teach the rising generation of practitioners. Who would want their future doctor to be taught by someone who had never treated a patient, he would muse.
\end{quote}

fied and, indeed, is ill-qualified to protect clients' interests.

It is no answer for the teachers to cry out that the bar is violating their rights of "academic freedom," or that clinical courses are too expensive. The students' rights are violated if deans and faculty do not offer trial advocacy courses with practicing lawyers and judges as adjunct instructors to teach them.\textsuperscript{68} Law students and the public rightly expect that lawyers are trained in oral and written advocacy. It is not enough that only three percent of law school courses be practical as against ninety-seven percent theoretical, as President E. Gordon Gee of the University of Colorado has found in his research.\textsuperscript{69} There must be a better balance between the two.\textsuperscript{70}

The ABA Section on Litigation headed by John R. Tomlinson of Seattle, recently reaffirmed the trial bar's commitment to improving advocacy by mounting yet another effort to remedy law school deficiencies in this important field.\textsuperscript{71} He joins the advocates of practical training in his belief that the ABA should ensure that trial advocacy training taught by experienced attorneys is made available to any law student who

\textsuperscript{68.} They are best qualified in the field and are anxious to serve. See infra notes 71-73 and accompanying text. They pose no challenge to the professor's image and gladly will serve with little or no salary. A dozen or more law schools now conduct excellent full clinical courses with adjunct instructors and operate within a normal budget.


\textsuperscript{69.} See Devitt & Sacks, supra note 53. In 1975, he and Donald W. Jackson conducted studies on the current curricula offered in law schools. The studies were published as \textit{Following the Leader? The Unexamined Consensus in Law School Curricula and Bread and Butter? Electives in American Legal Education}, under the auspices of the Council on Legal Education for Professional Responsibility, Inc. See W. Powers, supra note 57, at 1-2.

\textsuperscript{70.} Theoretical and practical training are not incompatible. Two professors from the Antioch School of Law have addressed this issue:

The debate over clinical education has proceeded as if clinical students were only being trained in the performance of specific tasks and has failed to recognize that clinical problem solving is in essence a complementary means by which an expanded set of analytic skills can be developed, expressed, and evaluated.


\textsuperscript{71.} Tomlinson, supra note 47, at 67.
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Mr. Tomlinson has appointed a committee, headed by an experienced trial lawyer, Robert Henley, the goal of which is “to advance the instruction of trial advocacy.” Mr. Tomlinson and officers of the Section of Litigation are to be commended for this new effort and it is hoped that they will be successful in convincing the ABA House of Delegates that the only effective way to achieve the desired objective is through amendment of the ABA standards to require that law schools offer trial advocacy training taught by experienced litigators to all students desiring it.

CONCLUSION

Adequate trial advocacy training must be required; it will not come through exhortation. The current ABA standard falls far short of the recommendations made by the Clare, Devitt, and Cramton Committees. Mere encouragement that law schools provide trial advocacy training has not brought about the needed changes identified by these committees. The effort to remedy the deficiencies in advocacy must continue. Recognition of the importance of skills training and its role in legal education by the law schools must start with the adoption of an accreditation standard requiring courses in trial advocacy training.

72. Id.
73. Id.