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Roderick N. Petrey

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# PROFESSIONAL COMPETENCE AND LEGAL SPECIALIZATION

RODERICK N. PETREY\*

Lawyers are facing a new phenomenon: more competent clients. American citizens are becoming better educated consumers and are demanding more information about the services they buy. They also are recognizing, more than ever before, the growing need for effective legal advice and representation in a complicated society where redemption of legal rights and benefits is a regular event for nearly everyone, rich and poor alike.

More competent clients are demanding more competent legal assistance. And lawyers, as one of the major producers of legal services, are responding with new attempts to satisfy these new demands. Leaders in the organized profession are trying to define lawyer competence broadly to include not only the quality of legal services, but the ethics of practice, the access to legal assistance, and the affordability of services as well. And lawyers are developing new enforcement mechanisms to help maintain the professional goal of continued competence.

Legal specialization has an important role to play in ensuring the continued competence of many legal practitioners. Specialization of legal practice, if constrained by requirements for truthfulness and quality assurance, can be an important tool for establishing and maintaining competence among practitioners, thereby promoting the delivery of high-quality, ethical, easily accessible, and affordable legal services to the general public.

## THE MARKET FOR COMPETENT LEGAL PRACTITIONERS

Two economic forces are profoundly changing the American legal profession: the identification of major, unmet needs for legal services and the growing numbers of lawyers admitted to practice each year. A recent preliminary report on a national survey of legal needs taken by the American Bar Association (ABA) in collaboration with the American Bar Foundation (ABF) reveals that even though adult Americans experience an average of 3.3 "serious legal problems" during their lives,<sup>1</sup> a third of the public has never used a

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\* Chairman, ABA Standing Committee on Specialization. B.A., Yale University, 1963; J. D., Harvard University, 1970.

<sup>1</sup> B. CURRAN & F. SPALDING, *THE LEGAL NEEDS OF THE PUBLIC* 63 (ABA-ABF 1974) [hereinafter cited as *LEGAL NEEDS*].

lawyer and another 28.9 percent has used a lawyer on only one occasion.<sup>2</sup> This "need gap" ironically exists along with a "job gap" for new lawyers. American lawyers number approximately 400,000.<sup>3</sup> Added to these are over 110,000 young people now in law schools, with about 30,000 graduating each year.<sup>4</sup> Many of these new graduates are not finding jobs as practicing lawyers.

Ideally, unmet needs would result in more actual consumer demand for the services of lawyers. These new demands then would be met by the increased supply of legal practitioners. But major barriers exist to keep potential consumers and lawyers from getting together.<sup>5</sup>

*Production traditions* which discourage mass production of simple legal services through systematic work management and the use of paraprofessionals and machinery;

*Marketing restrictions* which limit advertising;<sup>6</sup> prepaid, postpaid, and group practice;<sup>7</sup> and price competition; and

*Professional manpower policies* which encourage the hard-to-defend notion that all lawyers are highly competent, fungible producers of legal services who, once admitted to the bar, should retain an unrestricted license for life to practice in all fields of law.

Nevertheless, both consumers, represented by their own organizations and by government agencies such as the Antitrust Division of the United States Department of Justice and the Federal Trade Commission, and producers, represented by the ABA and by state or local associations of lawyers, are whittling away at these long-established barriers.<sup>8</sup> Major changes are on the way.

The major goal of those seeking change is to have competent legal practitioners, including as many specialized practitioners as

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<sup>2</sup> *Id.* at 79-81.

<sup>3</sup> See N.Y. Times, Nov. 17, 1974, § 4 (Week in Review), at 11, col. 3. According to this source, there were 385,500 lawyers in the United States in 1974.

<sup>4</sup> Section of Legal Education and Admissions to the Bar, *Report*, 1975 A.B.A. REP. No. 126, at 5-6.

<sup>5</sup> Some of the barriers preventing potential consumers from getting together with lawyers are noted in Brink, *Let's Take Specialization Apart*, 62 A.B.A.J. 191 (1976).

<sup>6</sup> ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101.

<sup>7</sup> *Id.* DR 2-103.

<sup>8</sup> In *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), for example, where minimum fee schedules were found violative of the antitrust laws, several of the groups that have been attempting to minimize the barriers keeping lawyers and potential clients apart were represented.

required, easily available to all people who need them. The organized legal profession has several ways to develop, maintain, and identify competent practitioners: undergraduate "prelaw" education; basic law school education; bar examinations; practice experience, including give-and-take with colleagues, courts, and clients; recognition of professional reputation through law lists, formal and informal referrals, and membership in specialized bar groups; and formal certification of specialties. Other methods, including periodic recertification of basic competency, have been proposed. Each item on this long list has an important role to play in developing and maintaining *basic* competence. Some, such as practice experience, recognition of professional reputation, and formal certification of specialties, also play important roles in developing and maintaining *specialized* competence.

The relative merits of each method of ensuring basic and specialized competence depend greatly on how we define the pathology of incompetency and, in turn, how we define the competent legal practitioner.

1. *The pathology of incompetency.* Some evidence exists that legal practitioners:

*Are hard to find.* The general public has difficulty finding a person to help with legal problems. According to the ABA's report on its survey of legal needs, 79.2 percent of all respondents agree that "[a] lot of people do not go to lawyers because they have no way of knowing which lawyer is competent to handle their particular problem."<sup>9</sup>

The reasons for this difficulty are clear. Except in the few states with experimental specialization certification or recognition programs combined with limited advertising, and the "historically excepted fields of admiralty, trademark, and patent law,"<sup>10</sup> a lawyer cannot advertise his special qualifications to the general public.<sup>11</sup> He may make his fields of practice known to bar-sponsored lawyer referral offices, and he may include his special fields of practice in bar-approved law lists or in announcements circulated only to lawyers.<sup>12</sup> But none of these devices, except, to a limited degree, the experimental specialization

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<sup>9</sup> LEGAL NEEDS, *supra* note 1, question 16 at 95.

<sup>10</sup> ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 2-14.

<sup>11</sup> *Id.* DR 2-105.

<sup>12</sup> *Id.*

regulation programs, helps the general public find a lawyer with special competence. Law lists are not designed for and are not easily available to the public; few lawyer referral services are adequately staffed or widely known by the general public; and neither law lists nor lawyer referral services attempt to control quality by certifying the special competence of the lawyer who concentrates in self-designated fields of practice.

Given the difficulty of finding a competent legal specialist, the consumer often turns to others, such as trust officers in banks, whose titles indicate the special expertise the consumer thinks he needs. In the ABA's legal needs survey, 75.8 percent of the respondents agree that "[t]here are many things that lawyers handle — for example, tax matters or estate planning — that can be done as well and less expensively by nonlawyers — like tax accountants, trust officers of banks, and insurance agents."<sup>13</sup>

*Cost too much.* Over 60 percent of the respondents in the ABA legal needs survey, including both people who have used and those who have not used lawyers, agree that "[m]ost lawyers charge more for their services than they are worth."<sup>14</sup> This perception may deter many people from going to lawyers. A later ABA analysis of the survey data reveals that 69 percent of those respondents who actually had used lawyers regarded the lawyers' fees as "reasonable."<sup>15</sup> But most people had little real knowledge of the fees lawyers charge for common legal services.<sup>16</sup>

*Produce services of mixed quality.* Some evidence of poor quality exists, namely malpractice suits,<sup>17</sup> surveys of courtroom performance,<sup>18</sup> and public attitudes,<sup>19</sup> but little has been done to define standards of performance and to

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<sup>13</sup> LEGAL NEEDS, *supra* note 1, question 15 at 95.

<sup>14</sup> *Id.*, question 26 at 96.

<sup>15</sup> 3 ALTERNATIVES, Jan. 1976, at 16.

<sup>16</sup> *Id.* at 17.

<sup>17</sup> See Shear, *Professional Liability Problems Among Architects, Engineers, Lawyers, and Accountants: A Comparison with the Medical Profession*, in U.S. DEPT OF HEALTH, EDUCATION, AND WELFARE, REPORT OF THE SECRETARY'S COMMISSION ON MEDICAL MALPRACTICE app. 637, 640-42 (1973).

<sup>18</sup> See Special Comm. for National Coordination of Disciplinary Enforcement, *Report*, 1973 A.B.A. REP. NO. 230.

<sup>19</sup> LEGAL NEEDS, *supra* note 1, at 93-96.

measure the overall quality of lawyers' services against those standards. The ABA's survey of legal needs reveals that the general public is less concerned with quality than with ease of access to legal practitioners. In the survey, 74.4 percent of the respondents agree that lawyers help clients avoid future problems and disagreements;<sup>20</sup> 60.7 percent think lawyers work harder at serving clients than in getting them;<sup>21</sup> and nearly 60 percent agree that "[l]awyers will take a case only if they feel sure they know enough about that area of the law to handle the case well."<sup>22</sup> An interesting finding of the ABA survey is that personal relationships between lawyer and client rank higher on a list of key qualities sought in lawyers than general reputation, ethical standards, professional skill, or fees.<sup>23</sup> Interpersonal skills therefore have much to do with perceptions of quality services and may be more important in the practice of law than legal educators recognize when they design curricula.

*Are ethically suspect.* The ABA's survey indicates that many people look for good general reputation and high ethical standards when choosing a lawyer.<sup>24</sup> Yet critics charge that many lawyers are not concerned enough about professional ethics.<sup>25</sup> Political events of the last few years have provided some documentation for the critics' charges.

2. *The characteristics of competency.* A legal practitioner with *basic* competence has sufficient knowledge, skills, and experience — substantive, procedural, interpersonal, and ethical — to make legal services of adequate quality and affordable cost easily available to clients who seek help. Efforts to ensure the availability of competent legal services to all who need them should be channeled towards four major goals:<sup>26</sup>

*Improving the quality of legal services,* primarily by improving the knowledge and skills of people who deliver legal ser-

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<sup>20</sup> *Id.*, question 14 at 95.

<sup>21</sup> *Id.* at 96.

<sup>22</sup> *Id.*, question 3 at 94.

<sup>23</sup> 3 ALTERNATIVES, Jan. 1976, at 15.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., J.S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976).

<sup>26</sup> The goals of specialization are discussed in Brink, *Let's Take Specialization Apart*, 62 A.B.A.J. 191, 191-92 (1976).

vices, whether they are lawyers, paraprofessionals, or laymen;

*Increasing the access of the general public to necessary legal assistance* so that the consumer can identify a legal problem and find the right people to help him resolve it or cope with it;

*Keeping legal costs affordable for the average consumer* so that competent legal assistance can be used when needed; and

*Maintaining high ethical standards* so that the legal system will attempt to achieve justice while it seeks to serve individual clients.

No carefully planned strategy exists, or has any realistic chance of success, to ensure a concurrent and balanced pursuit of these goals.

Instead of being carefully planned and carried out, changes in the delivery of legal services will be erratic. For example, advertising barriers may fall first,<sup>27</sup> making access to legal services easier. At the same time, prices may rise, partly as a result of advertising costs, creating new barriers between producers and consumers. Any changes in access or cost also will affect, for better or for worse, the quality and ethics of legal services. Unrestricted advertising may let the charlatan lawyer attract clients whose special needs he cannot meet; some consumers will accept low-quality services if the price is right. On the other hand, consumers, as they become more experienced in using lawyers, may recognize unqualified practitioners more easily and chase them from the marketplace.

Given the erratic nature of change, efforts to achieve access and cost objectives probably will overshadow efforts to upgrade and maintain the quality and ethics of legal services in the near future. Existing attempts to improve quality and ethics therefore become more important than ever before. Yet continuous pursuit of all four goals in the changing market for legal services remains an essential, if difficult, mission for the legal profession.

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<sup>27</sup> The ABA recently amended its Code of Professional Responsibility to liberalize, to a limited extent, the restrictions against advertising. See Fitzhugh, *ABA Eases Ban on Ads by Lawyers*, 175 N.Y.L.J. 32, Feb. 18, 1976, at 1, col. 2. The ABA's action results, at least in part, from a pending lawsuit challenging the Code's restrictions on first amendment grounds. *Consumers Union of United States, Inc. v. ABA*, Civil No. 75-0105-R (E.D. Va., filed Feb. 27, 1975).

## SPECIALIZED PRACTITIONERS EN MASSE?

If self-evaluations can be believed, most lawyers in the nation, including solo practitioners, are specialists. In 1970, 72.7 percent of American lawyers were in private practice.<sup>28</sup> Approximately 36 percent, or half of the private practitioners, worked as partners or paid associates in law firms.<sup>29</sup> These lawyers generally characterize themselves as specializing by legal doctrine, skill, or client. According to a 1969 California survey, 4 out of 5 lawyers in that State who were members of firms with more than 10 attorneys called themselves specialists.<sup>30</sup> The other half, 36.6 percent, of the private practitioners were solo practitioners, but not necessarily general practitioners.<sup>31</sup> According to the 1969 California survey, two out of three lawyers in that State considered themselves specialists.<sup>32</sup>

The lawyers not in private practice in 1970 worked as employees in private industry (12 percent) or as government lawyers (14 percent).<sup>33</sup> These lawyers generally call themselves specialists because they limit their practice to or concentrate on the particular problems of their employers. At least they do not hold themselves out as general practitioners to the public or even, in most cases, to their employers.

More recent evidence of widespread self-designation as specialists by lawyers is contained in a 1975 Illinois State Bar Association survey of its members.<sup>34</sup> A mere 1 percent of the respondents in that survey considered themselves general practitioners only.<sup>35</sup> Forty-eight percent said they engaged in specialized practice only.<sup>36</sup> The other 51 percent called themselves general practitioners who also had one or more specialties.<sup>37</sup>

Of course, most of these self-designations cannot be believed. Because self-designations are not generally publicized, they are not yet harmful to the public. Many lawyers call themselves "specialists"

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<sup>28</sup> See ABF, THE 1971 LAWYER STATISTICAL REPORT, table 5, at 10-11 (1972) [hereinafter cited as STATISTICAL REPORT].

<sup>29</sup> *Id.*

<sup>30</sup> *Preliminary Report: Results of Survey on Certification of Specialists*, 44 CAL. ST. B.J. 140, 144 (1969).

<sup>31</sup> STATISTICAL REPORT, *supra* note 28, table 5, at 10-11.

<sup>32</sup> *Preliminary Report: Results of Survey on Certification of Specialists*, 44 CAL. ST. B.J. 140, 142 (1969).

<sup>33</sup> STATISTICAL REPORT, *supra* note 28, at 11-12.

<sup>34</sup> *Economics of Legal Services in Illinois — A 1975 Special Bar Survey*, 64 ILL. B.J. 73, 102 (1975).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

without distinguishing between basic legal competence, combined with limitation or concentration of practice, and specialized legal competence. Surveys based on self-designations have revealed little more than a great need to establish uniform definitions of such terms as "specialization" and "limitation or concentration of practice." Disbelieving their self-designations is not a challenge to the integrity of the self-designated lawyers. They may, in all honesty, think they have special competence (and, indeed, they *may* have special competence). But competent consumers are demanding more objective evaluations of the special competency of lawyers. And that requires greater clarity of definitions, especially as lawyers begin to provide more information describing their practice to the general public.

The *specialized* practitioner must be distinguished from the practitioner with *basic* competence. A legal specialist is *more competent* in his field of specialty than the nonspecialist, as measured by knowledge, skills, and experience. And he actually provides higher quality legal services in his specialty to his clients, as measured by performance and peer or client evaluation.<sup>38</sup> The specialist is a practicing lawyer who has developed and maintained an expertise in a field of legal doctrine (such as tax), a legal skill or function (such as litigation), or a type of client (such as business corporations, an entire industry, or a government agency) sufficient to ensure that his special competence and the quality of legal services he provides for clients in his specialty are higher than the competence nonspecialists possess and the quality of work they provide in similar circumstances.<sup>39</sup>

A competent legal practitioner who limits his practice to or concentrates his practice on a field of legal doctrine, a legal skill or function, or a type of client is not necessarily a legal specialist. Although limiting or concentrating practice may be one important way to develop and maintain special competence, limitation or concentration of practice does not necessarily ensure high-quality legal services for clients or the special competence of the lawyer.

#### REGULATING SPECIALISTS

Potential consumers of legal services want easier ways to identify competent legal practitioners, especially those with specialized

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<sup>38</sup> The definition of "legal specialist" is derived in part from Johnstone, *An Introduction to Specialization and Certification*, 4 ALI-ABA CLE Rev., Apr. 13, 1973, at 4, col. 1.

<sup>39</sup> *Id.*

competence. Many lawyers who concentrate or limit their practice, and some who are recognized specialists, want to get more information describing their practice to the public. Why, then, should anyone object to more exchanges of information between consumers and producers of legal services? At least three concerns inhibit endorsement of the legal practitioner's unrestricted dissemination of description-of-practice information to the general public:

1. *The unsophisticated middle-income market for legal services.*

Business corporations and wealthy individuals, probably accounting for over half of the total annual volume of legal business by dollar value,<sup>40</sup> are sophisticated consumers; they generally rely on large urban law firms that develop and extensively use their own specialists and maintain high standards of quality through peer review within the firm and uninhibited client responses. Low-income individuals, although underserved, benefit from a nationwide system of legal services offices which monitor, and to some degree control, access, cost, quality, and ethics. Other Americans, including those with middle incomes, have unmet needs which lawyers are not now organized to fill. These consumers are relatively unsophisticated about finding, using, and controlling legal practitioners. It is this group that needs protection. Although greater use of lawyers probably will increase the ability of these consumers to separate good lawyers from bad ones, some minimum system of regulating the information given to these consumers by lawyers will help prevent injury by overzealous, business-hungry practitioners.<sup>41</sup>

2. *The need for truthfulness.* How does a consumer, or even a legal practitioner, distinguish among a lawyer who says he *concentrates on* wills and estates, one who says he *limits his practice to* wills and estates, and another who says he *specializes in* wills and estates? No definitions exist for these terms, which are commonly accepted and communicated. A lawyer who concentrates on tax law in one state may spend 25 percent of his time in that area of the law, while a lawyer in a contiguous state who limits his practice to tax may spend 60 percent of his time in that same area. No

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<sup>40</sup> Weinstein, *Sole Practice: Does It Have a Future?*, 5 JURIS DOCTOR July/Aug. 1975, at 24, 25.

<sup>41</sup> See Brink, *Let's Take Specialization Apart*, 62 A.B.A.J. 191, 192-94 (1976).

common definitions exist to help the lawyer and consumer identify fields of law, legal skills or functions, or types of clients in which a practitioner may concentrate, specialize, or limit his practice. The legal profession has few common terms to use in describing the ways its members practice. And it has few well-articulated standards to identify specialized practitioners. A system of regulation is needed to develop and publicize common terms and standards and to enforce their use. Without such a system, the consumer cannot be assured of the truthfulness of a lawyer's assertions.

3. *The need for quality assurance.* Because there are few standards identifying specialized practitioners, the consumer of legal services has no way — except hard, and perhaps costly, experience — to evaluate the quality of services he can expect from a legal practitioner. The legal profession should ensure that all lawyers who hold themselves out as specialists actually can offer high-quality specialized services. A system of regulation is needed to establish quality standards and to identify practitioners who meet the standards. As the profession moves toward easier access to and lower costs of legal services, it must, at the same time, provide reliable ways to ensure the high quality of specialized services.

For several years, the legal profession has been gaining experience about ways to address these concerns and to get more information to the public about the types of practices different lawyers have.<sup>42</sup> After nearly two decades of study, interest quickened when the state bar associations of California and Texas began experimenting with specialist certification plans in limited fields of practice and Florida and New Mexico instituted different kinds of self-designated specialist recognition plans on a trial basis. Many states have studied various types of specialization regulation plans, but most have postponed further action until the strengths and weaknesses of the four plans now underway can be assessed.<sup>43</sup>

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<sup>42</sup> Special Comm. on Specialization and Specialized Legal Education, *Report*, 79 A.B.A. REP. 582 (1954).

<sup>43</sup> See Special Comm. on Specialization, *Report*, 1975 A.B.A. REP. NO. 258. For a discussion of plans currently in effect and various other proposed plans, see Special Comm. on Specialization, *Report*, 1974 *id.* No. 238.

California<sup>44</sup> and Texas<sup>45</sup> have pilot programs that test for and attest to the competence of the specialists who meet the standards of the programs. Examinations, peer ratings, education, and specific types of practice experience are required in each state. Periodic recertification also is required. California has experimented in the fields of criminal law, workers' compensation, and taxation;<sup>46</sup> Texas is beginning to experiment in the fields of labor law, criminal law, and family law.<sup>47</sup>

New Mexico<sup>48</sup> and Florida<sup>49</sup> have self-recognition plans that permit a lawyer to designate limited numbers of specialties on his letterhead and business cards, on approved law lists, and in the yellow pages of the telephone directory.<sup>50</sup> The bar in each State, however, carefully disclaims any certification of such lawyers as experts in any field of law or as more expert or competent than any other attorney.<sup>51</sup> In New Mexico, a lawyer must spend at least 60 percent of his time in a field in order to identify himself as a "specialist."<sup>52</sup> If he does not spend 60 percent of his time in any one field, but limits his practice to no more than three areas, he may state that his practice is "limited to" or "primarily limited to" those fields of law.<sup>53</sup> The Florida plan has no formal time percentage requirements for specialty designation. It permits a lawyer to list three areas of specialization if he has practiced law for 3 years, has had substantial experience in each area for the 3 preceding

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<sup>44</sup> The regulation of specialization was approved by the California Supreme Court on December 31, 1974. CAL. BUS. & PROF. CODE § 6076 (rule 2-106) (West Supp. 1975). The State Bar Association then announced its specialist certification plan. See *Rules and Regulations of the California Board of Legal Specialization January 1974*, 49 CAL. ST. B.J. 170 (1974); *Standards for Specialization Announced*, 48 CAL. ST. B.J. 80 (1973). The California standards and rules have recently been modified. See *New Standards Set for Certification and Recertification of Legal Specialists*, 50 CAL. ST. B.J. 309 (1975).

<sup>45</sup> Regulation of specialization has been approved by the Texas Supreme Court. TEX. ST. B. R. DR 2-105. The Texas plan is presented in *Legal Specialization Comes to Texas*, 38 TEX. B.J. 235 (1975). For a discussion of proposed modifications to the Texas plan, see *Public Hearing Set for Proposed Revised Standards for Legal Specialization*, 38 TEX. B.J. 939 (1975).

<sup>46</sup> See *Standards for Specialization Announced*, 48 CAL. ST. B.J. 80 (1973).

<sup>47</sup> See *Legal Specialization Comes to Texas*, 38 TEX. B.J. 235 (1975).

<sup>48</sup> N.M. STAT. ANN. § 18-5-2 (rule 2-105) (Supp. 1975). For a discussion of the New Mexico plan see Pickering, *Why I Favor the New Mexico Plan*, 48 FLA. B.J. 180 (1974).

<sup>49</sup> INTEGRATION R. FLA. B. art. XXI; BY-LAWS INTEGRATION R. FLA. B. art. XVII. The Florida plan is also set forth and discussed in *In re Florida Bar*, 319 So. 2d 1 (Fla. 1975), and Adams, *The Florida Plan is Best*, 48 FLA. B.J. 185 (1974).

<sup>50</sup> N.M. STAT. ANN. § 18-5-2 (rule 2-105(B)) (Supp. 1975); *In re Florida Bar*, 319 So. 2d 1, 6 (Fla. 1975).

<sup>51</sup> Pickering, *Why I Favor the New Mexico Plan*, 48 FLA. B.J. 180 (1974); *In re Florida Bar*, 319 So. 2d 1, 8 (Fla. 1975).

<sup>52</sup> N.M. STAT. ANN. § 18-5-2 (rule 2-105(B)) (Supp. 1975).

<sup>53</sup> *Id.* (rule 2-105(C)).

years, and promises to enhance his proficiency in each area either through private study or participation in an approved continuing legal education program.<sup>54</sup>

An ideal specialization regulation program would pursue all four goals of a competent legal services delivery system: improving the quality, increasing the access, and ensuring the affordability of legal services within the constraints of high ethical standards. But, more practically, specialization regulation programs in different states have, depending on the needs in local areas, consumer knowledge and desires, and producer motivations and cooperation, emphasized one goal over the others.

The desire to improve quality by encouraging individual lawyers to concentrate practice experience and continuing education in limited fields of law is the primary motivation of many advocates of specialty regulation. The California and Texas specialty certification plans especially emphasize this objective. The primary objective of the New Mexico and Florida self-designation plans, on the other hand, is increased access to legal services; no attention is given to quality assurance under either plan.

The impact of specialization on cost has been the subject of some speculation,<sup>55</sup> but not of any serious research. Advocates of specialization assume that the specialist can perform a certain task more efficiently, and thus with less expenditure of time, than the nonspecialist. But each unit of the specialist's time may be more expensive than the nonspecialist's, and total costs may not be significantly different. In any event, it is doubtful whether reduced costs, if they result, will be passed on to the consumer in the form of reduced prices. No state specialization plan has yet included cost reduction as an important objective. Experience with group legal services plans and comprehensive law clinics may provide concrete ways to identify the cost savings that can result from specialized practice and ensure that these savings benefit the consumer.

By devising ways to get more information about lawyers to the public and by attempting to define quality assurance standards, specialization regulation programs have contributed to the maintenance of high ethics in the legal profession. These programs also have been restricted by constraints now in the ABA's Code of Professional Responsibility and in state bar association ethical codes.

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<sup>54</sup> *In re Florida Bar*, 319 So. 2d 1, 5-6 (Fla. 1975).

<sup>55</sup> See, e.g., Von Hoffman, *Legal Speciality Newest Ripoff?*, Chicago Tribune, Jan. 2, 1975, § 2, at 4, col. 3.

## NEXT STEPS

If constrained by requirements for truthfulness and quality assurance, state-sponsored specialization regulation programs can contribute to the establishment and maintenance of competence within the legal profession. The ABA, in cooperation with law schools, consumer groups, and others, can help the state bar associations develop and carry out such programs by preparing uniform definitions of terms and model standards to identify specialists in particular fields of law. The ABA also can identify and evaluate methods of quality assurance that the states can use. The organized profession must act with a sense of urgency to help both consumers and producers of legal services benefit from better ways to maintain professional competence.