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Some Notes on the Practice of Law in Spain

This past summer the writer spent a month studying at the University of Madrid, and had the opportunity to speak with several Spanish attorneys, and obtain some information concerning the similarities and differences between the United States and Spain with respect to the practice of law.

Legal Education

The tourist brochures for Spain continually make the point that "Spain Is Different." This is true with respect to legal education. In some ways the law schools are far behind what has happened here and in some ways they are perhaps prophetic. The law course is a five-year program which is an alternative (rather than a sequel) to an undergraduate degree program.

The law school at the University of Madrid has approximately 3,000 enrolled students but each year graduates only about 200. Some students who do not pass the final examinations at their first attempt may remain in school for several additional years preparing to retake the examinations, but many are not successful and eventually drift away into other occupations. The entire five-year curriculum is absolutely required and there are, at the present time, no electives. The course in the first several years deals to a large extent with historical development of Roman and civil law. The remaining portions of the program involve detailed studies of the various substantive and procedural codifications.

The method of presentation is the traditional lecture method. It appears that there is little, if any, use of the Socratic method, let alone anything approaching "clinical" programs. Within the next two years, however, several elective options will be introduced into the curriculum, presumably in response to student requests. All of the institutions of higher education in Spain are owned and controlled by the government. While centralized control is probably more evident in the primary and secondary schools, the fact of direct government control obviously has some influence on all professional schools including law schools.

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A law school diploma in effect constitutes admission to the bar, although membership in a local bar association is required if an attorney is to practice in that particular area. At no point is there any character or fitness investigation of the candidates since the diploma is based upon final examinations of an academic nature only. It appears that the only prerequisite to admission to a local bar association is payment of the requisite fees. Many graduates are not, however, able to find positions of a strictly legal nature and end up, in employment situations in which they do not directly use their legal training.

Practice of Law

The practice of law is severely overcrowded in Spain, partly due to the fact that there a number of "part-time" practitioners. It is not uncommon for an attorney to hold an academic or government post but at the same time to conduct a law practice. The nature of Spanish law practice is divided very sharply between the practitioners who represent domestic clients (who almost always practice individually or in associations of two or three people, and whose function is primarily that of a litigator) as opposed to those practitioners who represent foreign clients and who do practice "office" law.

The typical domestic-law Spanish attorney does not do as much "office" work as his American counterpart, because of the "notary" who presides over the authentication of many transactions, and serves some of the functions of not only an office lawyer but also of a minor judicial official. Notaries are law school graduates who have passed a further examination which is extremely competitive. Notaries do not represent individual clients, and are compensated by percentage fees based upon the economic value of the transactions which are verified or regularized before them.

Professional discipline problems are not regulated by either the government or the courts, but instead by the bar associations themselves. This tends to produce lack of effective action in many instances. However, this is not as critical as it might seem because embezzlement or defalcation is quite unusual. This is due to the fact that in most situations, attorneys do not have control over funds which belong to clients; it is customary for funds to be dispersed directly to clients rather than to attorneys on their behalf.

Within the legal profession itself, one ethical problem which is just beginning to be perceived is that of conflicts of interest. There seem to be no specific prohibitions against certain courses of conduct which we would consider to be clearly objectionable. For example, it appears that at times attorneys who occupy administrative positions in connection with the as-

assessment of taxes may at the same time be giving legal advice to corporations which are subject to these same taxes.

Selection of judges is by government appointment but candidates for such an office, after graduation from law school, spend an apprenticeship period assisting in the prosecutor's office and in various courts. Typically, such a candidate is initially appointed to an inferior court. Promotions thereafter, although made by the Ministry of Justice, seem almost always to be based upon demonstrated ability, and are remarkably free of political overtones. Although the country is clearly an authoritarian régime, competent defense counsel have been available in recent political trials, and have at times succeeded in obtaining (on behalf of their clients) either acquittals or reductions of charges without any apparent professional reprisals.

Law Office Economics and Law Office Management

There is no large middle class in Spain, and the amount of legal work on behalf of Spanish clients is not sufficient to fully occupy the time of local attorneys. The result is that many do not earn a decent living.

In this atmosphere of intense competition for legal work, the older and more established members of the profession have a distinct advantage since many of them have a government position or academic post which provides both an economic anchor and prestige. Some graduates obtain employment as assistants in the office of an attorney who is already established but this route to professional development is not as commonly followed as it is in the United States.

Given the fairly intensive competition for legal work, there is not much discretion left to an attorney in connection with the setting of fees, since the minimum fee schedules which have been promulgated are extremely detailed. This is partly due to the fact that there are many different types of courts, including some which are connected with administrative agencies, and separate fees are prescribed in these schedules not only for work in each of these courts but also for each of the various types of proceedings in each court. Similarly, fees in estates or "succession" matters are computed upon a decreasing percentage basis, like that utilized in many American minimum fee schedules.

The great majority of Spanish attorneys practice individually and do not keep time records. They usually bill in accordance with the minimum fee schedule. It is not typical to itemize disbursements unless they are quite large in amount; in these situations a special advance deposit from the client is usually obtained to cover them.

However, the larger firms in Madrid which represent foreign clients are quite similar to their Wall Street or Washington, D.C. counterparts, although on a smaller scale. The largest law firm in continental Europe is located in Madrid, and consists of 16 lawyers supported by a staff of 45 non-lawyer personnel. In this organization great attention is paid to the keeping of time records, even to the extent of the preparation of a weekly analysis of time spent for each attorney, together with copies of all work produced by the attorney during that period of time.

There is also a systematized effort to preserve past work products but little use of checklists. Electric typewriters and electrostatic copying machines are used but dictating machines are not in frequent use because the cost of secretarial help is so low. The managing partner of this particular firm is thoroughly conversant with American publications on law office economics and management, and also participates in semi-annual meetings with representatives from larger law firms in six other European countries, at which they discuss common problems of law office economics and management.

Conclusion

The wide disparity in economic standing of various segments of the Spanish bar reflects to some extent the similar underlying structure of the country itself. Spain presents a microcosm in which we can recognize some stresses and tensions which are also present in the American legal profession.