



**VOICES FROM THE BAR:
*A PRE NATIONAL SURVEY OF THE NATURE OF LEGAL PRACTICE IN
NIGERIA***

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CALS MONOGRAPH SERIES

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by

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First published in 2006
by the Centre for African Legal Studies
PO Box 7663
Port Harcourt, Rivers State
www.afrilegstudies.com

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Printed by

Printed Nigeria by:
PHAMAT PRINTING PRESS
29 Nnewi Street, Mile 1, Diobu,
Port Harcourt Tel: 08033387156

I. INTRODUCTION: BACKGROUND AND METHODOLOGY

The idea of this study lies in the belief that there is need to interrogate the nature of legal practice in Nigeria based on their shared views, concerns and beliefs of Nigerian legal practitioners. It proceeds on the belief that these views concerns and beliefs can contribute in the construction of the identity of the Nigerian legal practice environment in such a way that will positively impact the justice delivery system. Since legal practitioners are a critical component of this system, their views are a crucial building block for many reasons. For example insights gleaned from legal practitioners of their working conditions, their education and relationship to society translate into important reflections for the system because they test and question its elasticity; identify its strengths threats weakness and opportunities. This is a study that is not out to solve all the problems. It is designed to be Socratic; to engender serious contestations of the nature of the enterprise that legal practitioners are involved in and to challenge construct and deconstruct what seems to be fairly settled.

Our ultimate goal is to conduct a national survey covering about ten percent (10%) of legal practitioners including the judiciary. For such a large enterprise, a trial run is important. This is what this paper is about. It is our report of this trial run. For logistical reasons, our trial run was concentrated in Port Harcourt. We decided to use the open ended questionnaire method and a sample size of fifty Accordingly we administered 50 questionnaires* to lawyers practicing in Port Harcourt, Thirty three (33) of these questionnaires were returned. Two thirds of our respondents were male, while our female respondents made up the remaining. Our respondents represented a broad spectrum of Nigerian universities. They are from the following universities: Obafemi Awolowo University; University of Benin; University of Nigeria; Uthman Dan Fodio University; Benue State University Makurdi; Ambrose Alli University Ekpoma; Enugu State University of Science and Technology; Ahmadu Bello University; Rivers State University of Science and Technology and an English University. Perhaps because of the situs of our trial run, It seems understandable that more than half of our respondents are alumni of the Rivers State University of Science and Technology. Our respondents also reflected a wide spectrum of experience at the Bar. While our respondents who were below five years was approximately (60%); those who had practiced for more than five years at the bar made up the balance of approximately forty percent (40%). Furthermore over ninety per cent (90%) of our respondents worked in a firm while ten percent (10%) ran their own firms.T

* A copy of the footnote can be found at www.afrilegstudies.com

The questionnaires were divided into four sections; disciplinary machinery, legal practice, privileges and legal education and were administered in anonymity to elicit frank answers. A copy of the questionnaire is attached to this report.

II. DISCIPLINARY MACHINERY OF THE BAR

Our aim in this section was to assess the disciplinary machinery of the legal profession.

It was not surprising that all our respondents believe strongly that erring legal practitioners should be disciplined, even though they were divided on whether the disciplinary machinery of the bar is functional. The answers either way was even. Forty six per cent (46%) stated that it was functional and another (46%) percent felt otherwise. Our respondents gave us the following reasons why they thought the disciplinary machinery was performing below expectation: (i) it does not act as a deterrent because in their opinion there is an appreciable increase in cases of professional misconduct; (ii) it is subject to manipulation; (iii) the process is slow, bureaucratic and cumbersome; and (iv) lawyers and litigants alike seem to be unaware of its existence and its modus operandi leading to the fact that most cases of misconduct are not reported. Their evaluation of the different machinery for disciplining legal practitioners is interesting. There was consensus that the Legal Practitioners Disciplinary Committee is functioning below expectation. The reasons set above represents what our respondents believe is the reason for the performance of the Committee. It seems implicit in their answers that one of the principal cures for this state of affairs is that the members of this committee spend the time required to discharge the duties of the Committee. Respondents pointed to the status of the members of the Committee both in the profession and the judiciary.

Their answers to the question on the disciplinary powers of the Chief Justice of Nigeria shows that a majority (67%) are aware of the powers of the Chief Justice of Nigeria to discipline erring legal practitioners while thirty three (33%) are not aware of this power. We were taken aback by this fact since the Legal Practitioners Act enables this.

All our respondents believe that the Nigerian Bar Association should discipline erring members. When asked of the conduct that would qualify in this regard, our respondents stated the following: conversion of client's funds for personal use; commencing an action that lacks merit; acts contrary to the Legal Practitioners Act and the Rules of Professional Conduct; membership of secret cults; any criminal activity; and any action that undermines the legal profession. Their views on the appropriate punishment are also varied. Two thirds of our respondents believe that these members should be suspended. About a third think that a public reprimand and/or admonition is sufficient. Payment of fines and refund of misappropriated

monies was also suggested. We also found it curious that even though the sanction of striking off the roll is stipulated as part of the powers of other statutory bodies, more than half of our respondents believe that the Nigerian Bar Association should strike off the names of erring practitioners from the roll.

Almost all our respondents were aware of the Rules of Professional Conduct (RPC). Their response to the question of whether breach of these rules should lead to disciplinary proceedings indicate that thirty six percent (36%) are of the opinion that a breach of any of the rules should lead to disciplinary proceedings. Forty six percent (46%) on the other hand are of the view that only the breach of some rules should lead to disciplinary proceedings while eighteen percent (18%) did not give an opinion. We probed further by listing five (5) of these rules to ascertain the weight attached to specific rules by our respondents. The rules listed are the rules on dressing and decorum; rules on advertising; rules on conflict of interest; rules on client account and rules on public offices. With respect to the rules on dressing and decorum forty two percent (42%) of our respondents are of the opinion that a breach of the rules should lead to disciplinary proceedings while fifty two percent (52%) held a contrary view while six percent (6) did not express any their opinion. Even though the Rules of Professional Conduct prohibit advertising, our respondents seemed evenly divided as to whether breach of this rule should lead to disciplinary proceedings. While forty two percent (42%) of our respondents are of the opinion that a breach of the rules should lead to disciplinary proceeding, forty six (46) percent are of a contrary opinion. Twelve percent (12%) did not give us an opinion. It may be worthwhile to discern what is responsible for this attitude. It may well be that this is one rule that is observed in its breach. It may also be possible that respondents differed on their understanding of what exactly is meant by advertisement.

An overwhelming majority of respondents (73 %) stated that breach of the rules on conflict of interest should lead to the commencement of disciplinary proceedings. Those who did not think so were in the minority (12%). We noted that a sizable number of respondents (15 %) did not proffer any opinion.

By far it was the rules on client account (88%) that seemed to elicit a consensus amongst the respondents. They are of the view that a breach of this rule should lead to disciplinary proceedings. Of the remaining twelve percent only a negligible three percent did not concur, while nine (9%) did not answer the question.

When asked of the rules on public offices fifty eight per cent (58%) of our respondents were of the view that the breach of this rule should lead to disciplinary proceedings, while twenty two percent (22%) on the other hand are of the opinion that a breach of this rule should not lead to disciplinary proceedings. The same number of respondents twenty two percent (22%) did not give us a response.

III LEGAL PRACTICE

The questions in this part covered a wide range of issues on legal practice generally, from remuneration of legal practitioners to the reasons for the delay in the justice delivery system.

We sought to know from our respondents their primary motivation for practicing. Making a living and promotion of social justice topped the list. Other reasons that were admitted included enhancing their social standing. We probed further into practical manifestations of their promotion of social justice. A third of our respondents stated that they had handled pro bono cases; while other had given legal advice to less privileged members of the society. Some of the practitioners had engaged in public enlightenment campaigns on human rights.

On the form of remunerative arrangement adopted in the law firms that they worked in, forty two percent (42%) stated only salaries were paid; three percent (3%) stated that profits were shared, Eighteen percent (18%) stated that the arrangement is for the payment of salaries and the sharing of profits while another eighteen percent (18%) said there was no form of financial arrangement. About eighteen percent (18%) did not give us a response. Still on the earnings of legal practitioners, we sought to know what they earned annually, 39 percent of our respondents earned between N20, 000 to N300, 000.00 annually; 9 percent earned between N300, 000.00 to N400, 000.00 annually; 18 percent earned between N400, 000.00 to N500, 000.00 annually; 3 percent earned between N500, 000.00 to N600, 000.00 annually; 3 percent earned between N600, 000.00 to N800, 000.00 annually; and the last 3 percent earned between 1.3m to 1.8m annually. It is therefore evident that about sixty six per cent (66%) of our respondents earned not more than N500, 000.00 per annum.

We also curious to know if our respondents owned some material possessions that could represent the nature of their financial takings. While fifty two percent (52%) of our respondents own cars 48 percent (48%) did not. Ownership of houses showed a wide gulf. Only 21 percent of them lived in their own houses, while over two thirds of them (70 percent) were tenants. 9.1 percent did not give us any response.

We wanted to find out where else they would like to practice if they had the choice; their choice in decreasing order is Lagos-27%; Abuja -21%; and United Kingdom- 12% percent. The remainder of the responses ranged from working in multinational companies to other cities. The reasons, they gave for their choices are as follows economic/ financial reward; more and emerging opportunities; a developed legal system and professional fulfillment. It is interesting to note that one reason, which was also given by mostly those of our respondents who

mentioned their states of origin, was the access to relatives/ friends who would be their client base.

Our question on whether they were satisfied with the earnings of their practice elicited a mixed response. Three percent (3%) of our respondents stated that they were satisfied, 49 percent of them stated that they were not satisfied, while 42 percent stated that they were satisfied but want more.

Our respondents listed a number of reasons that would improve the earning capacity of their firms and they stated as follows: (i) effective publicity and marketing; (ii) exposure to emerging areas; (iii) specialization; (iv) the use of information technology; (v) effective and fast dispensation of justice;(vi) more profitable clients and referrals from existing clients and (vi) an improved economy. In this regard a significant majority of our respondents (75%) believe that information technology had improved their practice; 16 percent did not think so while 9 percent had no opinion on it. Those who stated that information technology had improved their practice gave the following reasons: (i) It has made communication easier; (ii) It has enhanced research through the provision of substantial data; (iii) It encourages efficiency; (iv) It leads to faster service delivery; (v) It also facilitates exposure to emerging trends

We proceeded from the belief that specialization would assist legal practitioners and asked our correspondents what they thought. Thirty three percent (33%) of our respondents stated that they were engaged in specialized practice while almost double of that group (64%) declared that they are into general practice. There is no doubt that it is a desirable end as fifty eight per cent (58%) of our respondents would like to specialize in an area of the law. We were not surprised that the nature of the economy would play a role in the answers of our respondents. Fifteen per cent (15%) of our respondents do not want to specialize citing the fact that it is restrictive and that in a poor economy there are a few fields practitioners could thrive on. In this regard we asked our respondents whether they would like to practice as barristers only, solicitors only or continue as both. An overwhelming majority of eighty-eight per cent (88%) stated that they would like to practice as both barristers and solicitors. Corporate and labour law litigation and commercial practices were the favoured choices for specialisation.

We also tried to find out what our respondents thought was the most effective source(s) of their clientele. From a list of sources, 49 percent attributed it to reputation, 21 percent attributed it to their childhood friend, 15 percent attributed it to church related activities, 12 percent attributed it to political associates while 9 percent attributed it to community related activities. 27.3 percent however, did not give us a response.

With respect to certain welfare matters we found out that legal practitioners are performing badly. A worrisome majority of our respondents did not have an insurance scheme (88%) or a pension scheme(85%).

We also sought the views of our respondents on the factors that contributed to the delay in justice delivery. Their responses are quite revealing. Eighty per cent (80%) stated that the delay was as a result of long and frequent adjournments; fifty five percent (55 %) of our respondents attributed it to judicial officers having too many matters in their cause list; fifty eight (58%) also attributed it to the delay tactics employed by opposing counsel; thirty per cent (30%) stated that it was as a result of the incompetence of judicial officers; while 9 percent stated that it was as a result of clients refusing to perfect their brief.

IV. PRIVILEGES

Our inquiry on legal privileges was on the machinery for the conferment of the rank of Senior Advocate of Nigeria (SAN). Even though thirty per cent (30%) of our respondents met the post call criteria for application to become a senior advocate, none of them had applied for the position. A third of our respondents are of the opinion that the criteria for selection of SAN are adequate, while a fifth of the respondents think it is inadequate. Of concern is the fact that almost half of our respondents did not give an opinion. It will be interesting to find out if this group represents apathy to the title. There was no equivocation with respect to the transparency of the selection process. Seventy per cent (70%) stated that the process was not transparent while twenty four per cent (24%) percent were of a contrary opinion. The six per cent (6%) who stated that the selection process was transparent premised their argument on the fact that the requirements in age and court appearances were always complied with. The other respondents stated a number of reasons for their position that the process is not transparent. In the main they are that there is massive lobbying; that the Nigerian Bar Association is not involved; that the decision is left entirely in the hands of the privileges committee; and that the selection process is not based on merit because a number of other factors such as ethnicity, godfatherism play a dominant role. Consequently many competent lawyers have not been elevated. There is no doubt that a majority of our respondents believe that the selection process should be reviewed. Accordingly they did not agree that the system should be discarded. Thus seventy three per cent (73%) are of the opinion that it should not be discarded, only fifteen per cent (15%) think that it should be discarded. Those who are of the view that the title of SAN should be discarded based their argument on the discriminatory practices. On the other hand, those of a contrary opinion gave the following reasons for their view: (I) it encourages hard work and diligence; (ii) it is financially rewarding; (iii) It serves as a mark of distinction; (iv) it is an ancient tradition of the profession; and (v) it regulates decorum and serves as a check on the conduct of lawyers. The

clamor for the increase of the number of senior advocates is not reflected in the opinion of our respondents. Since a significant number had stated that the process was not transparent and about half of them believe that the criteria is adequate, it seems fairly consistent that only about forty per cent (40%) said the number should be increased.

On whether the prospects of becoming an SAN have motivated them to work hard, the results seem even. While forty two per cent (42%) percent said yes, 46 percent said no while 12.1 percent gave no opinion.

V. LEGAL EDUCATION

Our questions on legal education were varied. They covered the impact of undergraduate and post graduate legal education on the performance of legal practitioners; an assessment of the performance of law faculties; the desirability of law lecturers practicing and being appointed judicial officers; suggestions to improve the teaching and administration of the Nigerian Law School; and participation in continuing legal education.

More than half of our respondents either could not state that their performance as legal practitioners was influenced by their undergraduate study or they stated out right that there is no such link. This group of our respondents thinks that the studies were not rigorous enough to prepare them for practice. Only forty percent (40%) of our respondents stated that their performance as legal practitioners was directly linked to their undergraduate course of study. The effect of postgraduate studies is however assessed positively. Our respondents that had a post graduate degree stated its benefits as including enhanced specialized practice; improved understanding of the law; facilitated better opportunities and sharpened their practice generally.

We also asked our respondents to rank the first six faculties of Law in Nigerian Universities. Their response was as follows in order of prominence: University of Lagos; University of Nigeria; Obafemi Awolowo University Ile-Ife; University of Benin; University of Ibadan; and Rivers State University of Science and Technology. Of these six faculties listed, it is interesting to note that the Faculties of Law of the University of Nigeria, University of Ibadan and Obafemi Awolowo University were denied accreditation by the National Universities Commission (NUC) as a result of their failure to meet minimum academic standards.

The views of our respondents were also sought on whether law lecturers should practice. An overwhelming majority (88%) is of the opinion that law lecturers should practice while a negligible minority (12%) thinks otherwise. Both groups proffered their reasons. The group of the view that law lecturers should practice

had the following reasons: (i) it is of utmost benefit to both the students and the lecturers as it makes for qualitative teaching; (I) it enhances practical knowledge of the law and enables the lecturers impact practical realities of the law to students in addition to theory; (iii) it keeps the lecturers abreast of the current position of the law. The group who opposed the idea stated that combining practice with lecturing would reduce their teaching output, as both career paths are highly demanding. Furthermore they stated lecturers should focus their attention on the teaching and training of potential lawyers.

We also sought the views of our respondents on whether law lecturers should be appointed as judicial officers. Sixty seven per cent (67%) were of the view that they should be appointed while twenty-one (21%) declared that they should not be appointed. The majority gave their reasons as including the fact law lecturers have good knowledge of the law especially where they have been lecturing and teaching. In addition, they possess analytical minds and the ability to carry out research on legal issues. The main reason given by the opposition is that law lecturers lack procedural experience.

We also sought from our respondents what changes they would make to the administration and teaching of the Nigerian Law School and they made a number of suggestions: (I) making the course content more practical; (ii) reviewing the admission policy and the curriculum content; (iii) Allotting more time to court/chamber attachment; (iii) making study sessions interactive; (iv) entrepreneurship studies should be introduced; (v) more emphasis should be placed on ethics and court room decorum; (vi) Reducing the duration of studies at the law school to a two-year program and increasing that of the university to a four-year program; (vi) Allowing every faculty of law to train lawyers for admission into the legal profession; (vii) qualitative contact of law school students with institutions such as the Corporate Affairs Commission, different prisons, and appellate courts; (viii) removal of incompetent lecturers; (ix) reduction of dependence on government funding by creating alternative sources of income.

We also asked our respondents how many of them had attended any continuing legal education program. Sixty one per cent (61%) had attended one or more programs while thirty nine per cent (39%) had not attended any of such program. Those who attended the program stated that they were quite educative. There was unanimity that such programs should be organized frequently and that its depth and interactivity were essential if they were to have the desired effect.

An overwhelming number of respondents (92%) stated that they would buy a law journal. The things they look out for in law journals are: (i) excellent research and brilliant discussions; (ii) current topical legal issues; (iii) international issues such

as public international law and international humanitarian law; (iv) quality of print; (v) excellent critique of judgments; and (vi) articles and commentaries on areas such as law office management, professional ethics' commercial law including company law. With respect to law reports about fifty five percent (55%) stated that they bought law reports regularly. The remainder of the respondents either did not buy law reports or they did not answer the question.

Their assessment of the law reports is quite revealing. They stated that even though some law reports were of good quality and helpful, they were expensive and quite misleading sometimes. All the law reports were accused of being repetitive. Our respondents were particularly hard on the new law reports. In their opinion they are not properly edited.

We asked them to identify critical areas of the law that required academic materials. In order of prominence these areas were identified as energy, oil and gas, petroleum, environmental law; matrimonial causes and family law and land law; intellectual property.

VI CONCLUDING REMARKS

The enthusiasm of our respondents convinced us that this was a long over due study. Some of the answers may not be radical or new. Yet it is the empirical basis of the study that strengthens some of the views that have been commonly held. Since this is a trial run it may be safer to await the result of the main study. However, preliminary exercises such as this enable us to advance some conclusions, which can be verified by the conclusions of the main study. And there are a number of them. Firstly legal practitioners are greatly dissatisfied with the slow bureaucratic process of the Legal Practitioners Disciplinary Committee and there is need for far reaching reforms that will include public awareness campaigns; a better means of identifying and reporting professional misconduct; and mechanisms to ensure that the LPDC devotes more time to its work. The second hypothesis is that the Nigerian Bar Association should discipline erring members with the type of sanctions available to the Legal Practitioners Disciplinary Committee. Thirdly there is need to substantially revise the Rules of Professional Conduct. Thus while there was no equivocation on the rules on clients account, public offices and conflict of interest, members seem evenly divided with respect to the rules on advertising and those on dressing and decorum. With respect to advertising, legal practitioners believe that it will enhance their earning capacities. Fourthly, legal practitioners are generally dissatisfied with their earnings which is evident from the fact that almost two thirds of them earned not more than half a million naira annually. Sixthly legal practitioners work under

appalling conditions. For example many do not have a pension scheme or insurance. Sixthly, legal practitioners want to remain barristers and solicitors desire to specialise but cannot do so because of the poor state of the economy. Seventh, the rank of Senior Advocate of Nigeria is very much attractive even as there is consensus that the process is not transparent. One clear cure seems to be the involvement of the Nigerian Bar Association in the selection process and the public disclosure of the process of selection. The eighth point is that there is need to substantially reform legal education in Nigeria. Ninth, law lecturers should be allowed to practice and be appointed to judicial offices. Tenth, there is need to moderate the quality of Nigerian law reports. Our final conclusion is that legal practitioners will patronise journals that are of a high academic and is in addition well produced.

Our responses did show that there were many follow up questions we did not ask and there were many issues that were not addressed. For example we did not address the role of the Nigerian Bar Association in legal practice. We also did not find out if there were gender bias, discrimination or sexual harassment in the course of practice. These issues and more will occupy us in the final study.