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# (Sesquicentennial) The Changing Course of Study: Sesquicentennial Reflections

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## Academic Programs

### THE CHANGING COURSE OF STUDY: SESQUICENTENNIAL REFLECTIONS

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The law school's sesquicentennial provides an opportunity to reflect upon its development as an institution. Since the course of study lies at the heart of that institution and forms the fundamental bond linking faculty to student and students across the generations, this history would be incomplete without expanded observations on the development of the school's educational program over the years. One area of development—the creation and growth of the law school's clinical program—is detailed at length elsewhere in this volume.<sup>1</sup> This essay therefore concentrates on tracing national efforts to effect curricular reform in legal education, highlighting aspects of the current UNC School of Law curriculum that show particular promise, and offering modest reflections on the probable course of curricular innovation in the years ahead.

#### I. NATIONAL EFFORTS TO EFFECT CURRICULAR REFORM IN LEGAL EDUCATION

Detailed histories of the evolution of American legal education<sup>2</sup>

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1. See Richard A. Rosen, *Clinical Legal Education*, 73 N.C. L. REV. 751 (1995).

2. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983). Several earlier studies of American legal education also

and of the early development of legal education at the University of North Carolina<sup>3</sup> are found elsewhere. Suffice it to say that during the first 100 years of the UNC School of Law's development, national legal education had evolved through four principal phases: a requirement for some period of law study followed by a bar exam; recognition of law school as an alternative to apprenticeship; the requirement of law school attendance in lieu of apprenticeship; and the requirement of college attendance and graduation from an ABA-approved law school in order to sit for the bar in most states.<sup>4</sup> In the last fifty years, debate has generally focused on curriculum and pedagogy within this established framework.<sup>5</sup>

The curricula of most American law schools in the late 1940s were characterized by the American Bar Association as follows:

The curricula are fairly well standardized. The vast majority of schools are either local or regional and the curricula have been fashioned largely around the subjects in which the graduates of the school must be examined for admission to practice. By and large, the law students have pressed for the "bread and butter" courses and the subjects specified in the rules for admission to practice. The law schools have tended, because of limited funds, inadequate facilities, and lethargy, to yield to the pressures.<sup>6</sup>

Legal historian Robert Stevens summarizes the curricula of the post-war years in similar, unflattering terms. In Stevens's view, the course of study was "disheartening" and filled with warmed-over reforms that had been tried in the 1920s and 1930s but failed due to "the remarkable underfunding of legal education manifested in poor student-faculty ratios, the lack of student interest in scholarly

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remain relevant. See HERBERT L. PACKER & THOMAS EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 164-328 (1972) (reprinting Alfred Z. Reed's seminal 1921 study, *Training for the Public Profession of the Law*; Preble Stotz's reflections on the Reed study, *Training for the Public Profession of the Law (1921): A Contemporary Review*; and Brainerd Currie's important commentary, *The Materials of Law Study*, originally published in 1951 and 1955).

3. See Albert Coates, *The Story of the Law School at the University of North Carolina*, 47 N.C. L. REV. 1 (1968).

4. STEVENS, *supra* note 2, at 205.

5. A recent law suit by the Massachusetts School of Law challenging the role of the American Bar Association in law school accreditation has reignited the more fundamental debate, however. See Ken Myers, *Law School Suit Against Accreditation Officials*, NAT'L L.J., Dec. 6, 1993 at 4.

6. STEVENS, *supra* note 2, at 210 (quoting *ABA Survey of the Legal Profession*, in LOWELL S. NICHOLSON, *LAW SCHOOLS OF THE UNITED STATES* 21 (1958)).

endeavors, and a strong tradition of faculty independence.”<sup>7</sup> Stevens characterized the two post-war decades as reflecting cyclical changes (including periodic revisitation of certain types of enrichment courses), disenchantment with the case method, and a modest increase in the number of electives, often taught as seminars.<sup>8</sup> Stevens, quoting Albert Z. Reed’s study of the curriculum forty years earlier, found that the law school curriculum continued to be a “mere aggregate or conglomerate of independently developed units.”<sup>9</sup> Not surprisingly then, curricular reform efforts during the 1950s and 1960s sought (unsuccessfully) to make legal education more programmatic or sequential.<sup>10</sup> Modest efforts were also undertaken to attend to legal skills not easily emphasized through the case method, develop introductory courses to bring greater cohesion to the curriculum, and create tutorial programs taught by recent graduates to enhance writing instruction.<sup>11</sup> Seeds were being planted that would yield more significant reform in later years, however, particularly in the form of improved skills training at “the better state universities,” such as the University of North Carolina.<sup>12</sup>

The civil rights movement and the Vietnam war brought a growing sense of frustration and more significant critiques of legal education. Students sought more “relevant” courses relating to such topics as poverty and civil rights,<sup>13</sup> and the Socratic method came under attack.<sup>14</sup> Dissatisfaction with legal education in the second and third years and the perceived need to graduate more lawyers more quickly to address the needs of unrepresented populations led to proposals to shorten the duration of legal education to less than two years.<sup>15</sup> Other methodologically driven strategies to address upper-division discontent were employed by law schools during this period, including eliminating upper-division requirements in deference to student choice among elective offerings; introduction of more intensive writing opportunities; and use of smaller classes where possible.<sup>16</sup> Intellectually driven solutions were also proffered, such

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7. STEVENS, *supra* note 2, at 210.

8. *Id.* at 211.

9. *Id.*

10. *Id.* at 212.

11. *Id.*

12. *Id.* at 213.

13. *Id.* at 234.

14. PACKER & EHRLICH, *supra* note 2, at 29-30.

15. *Id.* at 78-83.

16. *Id.* at 31.

as encouragement of joint work with other disciplines (in some cases through the introduction of "law and . . ." courses, in others through creation of joint degrees),<sup>17</sup> and reformulation of the basic inquiry that underlies the study of law toward more socially oriented and philosophical ends.<sup>18</sup>

Two major reports published by leading legal educators during the 1970s reflected relatively radical and radically different strategies for addressing the perceived malaise. In 1971, Professor (and later Dean) Paul Carrington authored a major study on behalf of the Association of American Law Schools.<sup>19</sup> Carrington's study stressed the importance of diversity of mission and objectives in American legal education. It included both a general statement of objectives for American legal education (setting forth important philosophical assumptions) and model curricula with related commentary. Three of Carrington's major objectives are worthy of special note:

(1) Legal education should offer training that is coherently related to the varied demands of the public for legal services and to the varied ambitions of a wider array of students.

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(3) Each [AALS] member school should consider the extent to which its instructional offering ought to relate to such diverse goals as:

(a) training individuals for general practice as lawyers;

(b) training lawyers desiring special competence in particular fields of practice;

(c) training scholars capable of interdisciplinary research;

(d) training individuals for careers in the delivery of legal services as members of allied professions;

(e) training about law for students motivated by intellectual curiosity, by uncertainty of career goals, or by career goals in other disciplines.

17. *Id.*

18. *Id.* at 34-36 (describing "secularization" as the "prime intellectual cause of the contemporary malaise in legal education," and suggesting a renewed emphasis in the legal curricula on the three dimensions of "justice" defined by Calvin Woodard: the needs of private individuals (the "practical aspect"), problems too complicated or too far reaching to be resolved on a piecemeal basis (the "collective aspect"), and speculation about the nature and role of law in any of its variegated forms (the "philosophical, or theoretical aspect")).

19. The Carrington report was published initially in AALS, PROCEEDINGS, Pt. 1, Sec. 2 (1971). It is set forth in full at Appendix A of PACKER & EHLICH, *supra* note 2.

To the extent that each is deemed to be an appropriate goal of a particular school, its offerings should be coherently related to such goals.

(4) In pursuing such goals, schools should not be inhibited by received limitations which do not relate to function. Specifically, schools should not be bound by the traditions that:

- (a) all graduates must be trained to omnicompetence;
- (b) all schools must pursue the same general goals;
- (c) most courses or units of instruction must be centered on a core of doctrine and serve the usual function of training students "to think like lawyers";
- (d) all students must have prolonged undergraduate training;
- (e) students cannot attain their first degrees in law without three years of study within the walls of a law school.<sup>20</sup>

In short, Carrington advocated that legal education should be related to the public's demands on the profession; reflect individual law schools' choices among diverse possible missions; and resist traditional constraints or assumptions that have tended to drive curricular development. In keeping with these assumptions, Carrington proposed a standard curriculum incorporating basic, intensive (seminar-like), and extensive (large-group) instruction; an advanced curriculum which provided opportunities for specialized and research instruction; and an open curriculum available to undergraduates and those interested in instruction in allied professions.<sup>21</sup> Carrington envisioned the standard curriculum as taking less than three years, and incorporated the advanced curriculum to satisfy existing ABA residency requirements, pending fundamental change in accreditation requirements that never occurred.

While Carrington's study emphasized the architecture and choices implicit in legal curricula, an American Bar Association study authored by Dean Roger Cramton emphasized the need for accountability to the public and the broader institutional forces within universities and the legal profession that shape those choices. Cramton's point of departure was Chief Justice Warren Burger's well-remembered query: Are lawyers competent?<sup>22</sup> The Cramton task

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20. PACKER & EHLICH, *supra* note 2, at 48-49.

21. *See id.* at 101-26.

22. *See* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE

force concluded that the historical practice by which young lawyers gained acceptable levels of competence in practice was no longer as acceptable as it had been in the past; skillful professional performance could indeed be improved by curricular reform within law schools; and the practicing bar had a responsibility to assist law schools in undertaking such curricular reform by helping identify new resources needed to fuel such an endeavor.

The Cramton task force also offered more specific recommendations, including the following: (a) consideration of the full range of qualities and skills important to professional competence in reaching admissions decisions; (b) providing training in fundamental skills including legal analysis, legal research, writing, oral communication, fact gathering, interviewing, counseling, and negotiation; (c) modification of pedagogy to emphasize constructive work habits, attitudes, and values and to incorporate more small classes, cooperative work among law students, and alternative approaches to evaluation; (d) introduction of greater structure and coherence into the three-year law school curriculum; and (e) involvement of lawyers and judges along with traditional faculty members as teaching personnel.<sup>23</sup> In short, the Cramton report emphasized the linkage of legal education within the academy to the ultimate delivery of high-quality legal services; stressed the responsibility of the academy in fostering greater competency; and suggested ways through which the academy could enhance training in "practical skills."<sup>24</sup> The report also cited the unavoidable resource questions raised by its proposals, and noted the legal profession's responsibility for addressing this problem. Not surprisingly, the Cramton report also revisited the continuing theme of needed reform in curricular structure and pedagogy.<sup>25</sup>

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ROLE OF THE LAW SCHOOLS 1 (1979).

23. *Id.* at 3-5.

24. In this respect, the Crampton report picked up the trail of the legal realists, particularly Jerome Frank, who had advocated the creation of "clinical lawyer-school[s]" in both the 1930s and the 1950s. See generally Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20 (1951) (reviving his earlier critique of legal education as suffering from "reality-phobia"); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933) (advocating a restructuring of law school education that would diminish the role of the case study and increase students' exposure to the day to day realities of legal practice).

25. A more in-depth critique of law school pedagogy is found in THOMAS L. SHAFFER & ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* (1977).

The 1980s witnessed further efforts to grapple with the themes developed so forcefully in the Carrington and Cramton reports.<sup>26</sup> Although the Carrington proposals had had little effect in fostering major structural reform, a number of schools endeavored to foster a greater sense of progression or integration within their curricula. The 1989 annual meeting of the Association of American Law Schools featured presentations on various structural curricular reforms, including Harvard's experimental effort to coordinate first-year courses and introduce week-long "bridge" segments emphasizing topics of relevance to each course,<sup>27</sup> and Utah's "capstone-cornerstone" program which sought to offer both integrated, intensive courses ("capstones") and compressed coverage of broad subject areas ("cornerstones").<sup>28</sup> It also emphasized developments in teaching lawyering skills,<sup>29</sup> developments in teaching ethics,<sup>30</sup> and attitudinal and process issues raised by curricular reform.<sup>31</sup>

The late 1980s also saw the birth of another American Bar Association Task Force, this one chaired by New York City lawyer Robert MacCrate, and entitled *Law Schools and the Profession: Narrowing the Gap*. The task force report *Legal Education and Professional Development—An Educational Continuum*, was published

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26. Articles on curricular reform published during this period include Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); Robert A. Gorman, *Legal Education at the End of the Century: An Introduction*, 32 J. LEGAL EDUC. 315 (1982); Geoffrey C. Hazard, Jr., *Curriculum Structure and Faculty Structure*, 35 J. LEGAL EDUC. 326 (1985); Frank I. Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL EDUC. 352 (1982); James Boyd White, *Doctrine in a Vacuum: Reflections on What a Law School Ought (and Ought Not) to Be*, 36 J. LEGAL EDUC. 155 (1986).

27. Todd D. Rakoff, *The Harvard First-Year Experiment*, 39 J. LEGAL EDUC. 491 (1989).

28. Kristine Strachan, *Curricular Reform in the Second and Third Years: Structure, Progression, and Integration*, 39 J. LEGAL EDUC. 523 (1989).

29. See, e.g., Daan Braveman, *Law Firm: A First-Year Course in Lawyering*, 39 J. LEGAL EDUC. 501 (1989) (recounting Syracuse's experience); Jacqueline M. Nolan-Haley & Maria R. Volpe, *Teaching Mediation as a Lawyering Role*, 39 J. LEGAL EDUC. 571 (1989) (discussing the growth and methodology of law school mediation instruction); Leonard L. Riskin & James E. Westbrook, *Integrating Dispute Resolution Into Standard First-Year Courses: The Missouri Plan*, 39 J. LEGAL EDUC. 509 (1989) (discussing the experience of the University of Missouri-Columbia School of Law).

30. See, e.g., David Link, *The Pervasive Method of Teaching Ethics*, 39 J. LEGAL EDUC. 485 (1989).

31. See, e.g., Curtis J. Berger, *A Pathway to Curricular Reform*, 39 J. LEGAL EDUC. 547 (1989); Eleanor M. Fox, *The Good Law School, the Good Curriculum, and the Mind and the Heart*, 39 J. LEGAL EDUC. 473 (1989).



with great fanfare in 1992.<sup>32</sup> It challenged the purported "gap" between the legal education community and the legal profession, finding instead a marked contrast between expectation and reality.<sup>33</sup> The report discussed at considerable length the profession for which lawyers must prepare, emphasizing the growth and diversity of the profession, its diverse practice settings, and the organization and regulation of the profession.<sup>34</sup> It then set forth its "vision of the skills and values new lawyers should seek to acquire"<sup>35</sup> (including skills in problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving ethical values; and fundamental values related to providing competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development).<sup>36</sup> It emphasized the educational continuum through which lawyers acquire their skills and values (beginning prior to law school, and continuing through law school, the transition from law student to practitioner, and professional development after law school).<sup>37</sup>

In many respects, the MacCrate report represents a continuation of the dialogue stimulated by the Cramton report of thirteen years earlier, although in this case, without emphasizing the critical question of resources.<sup>38</sup> Of prime importance is the MacCrate report's appreciation for the complex nature and continuing duration of lawyers' educational venture, the fundamental responsibility vested in each lawyer to pursue that education, and the multiple providers who assist the lawyer in doing so. How the MacCrate report's prescriptions for change will be embraced by the academy and the legal profession remains to be seen.

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32. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992).

33. *Id.* at 4-6.

34. *Id.* at 13-120.

35. *Id.* at 121.

36. *Id.* at 139-41.

37. *Id.* at 225-317.

38. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 172, 174, 196-97 (1993).

## II. THE EVOLVING CURRICULUM AT THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW

### A. *Historical Evolution*

The evolution of the curriculum at the University of North Carolina School of Law in many respects paralleled national trends. Writing in 1949, Dean Henry Brandis observed that "[i]f there is a law faculty in the country which is completely satisfied with its curriculum and teaching methods, the writer is not acquainted with it. Certainly, our faculty is not wholly satisfied in these respects . . . . The changes in our curriculum have been gradually cumulative rather than drastic."<sup>39</sup>

In his ensuing yearly reports, Brandis was to note the addition of individual courses such as military law, enhancement of the curriculum through courses offered by visitors during the summer session, marginal shifts in the first-year curriculum (affecting civil procedure, property, and criminal law), and modest growth in the number of seminars. A more comprehensive review occurred in 1956, when changes were made in the North Carolina bar examination and a reduced number of units were assigned to some courses.<sup>40</sup> Certain curricular developments were characterized as "frankly experimental," including the introduction in 1959 of a course in preparation for trial, featuring expert testimony by Medical School faculty and involvement of practicing lawyers.<sup>41</sup> In that same year, the school began sectionalization of first-year courses and advanced courses.<sup>42</sup> A course in legal method had been introduced by 1964, and the faculty attempted to tinker with and improve it, seemingly to no avail.<sup>43</sup>

Modest reform was forecast in 1965, when Dean Phillips reported that

the [faculty curriculum] committee this year is considering the possibility of several fairly fundamental realignments of traditional materials in order to open up more electives to advanced students; the problem of working in more formal and systematic instruction in all aspects of the professional responsibility of the legal profession; and the problem of

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39. Henry Brandis, Jr., *The Law School*, 28 N.C. L. REV. 73, 81 (1949).

40. Henry Brandis, Jr., *The Law School*, 35 N.C. L. REV. 63, 67 (1956).

41. Henry Brandis, Jr., *The Law School*, 38 N.C. L. REV. 62, 63 (1959).

42. *Id.*

43. J. Dickson Phillips, Jr., *The Law School*, 43 N.C. L. REV. 110, 116 (1964).

providing the best possible introductory and orientation type course for beginning students.<sup>44</sup>

Subsequent years witnessed such refinements as the abandonment of a required first-year course in legal research (the first-year class had grown too large and an advanced limited-enrollment elective was substituted), the shift of equity into the first year (a change that was swiftly reversed), the introduction of a three-day orientation program, and the creation of a year-long course in civil procedure, in lieu of separate courses in pleading and parties and trial and appellate practice.<sup>45</sup> A new four-hour course in sales and secured transactions and a new three-hour course in land finance and development were added in deference to the growing importance of the Uniform Commercial Code.<sup>46</sup> A new "pervasive" method of presenting professional responsibility materials was introduced into the required first-year curriculum in 1970.<sup>47</sup>

The law school student body and faculty embraced somewhat more expansive review in the following years. An editorial in the *Law School Record* in November 1970 observed that "we are undergoing a new series of changes in our national life," and suggested that even Harvard's Professor Langdell (often cited as the originator of the Socratic method and case-study approach that subsequently swept the country) would approve.<sup>48</sup> Students noted the changes in the sheer bulk volume of laws, legal principles and court decisions (making it impossible to teach or learn all relevant black letter in three years' time); social trends forcing the legal profession to oversee and mediate changes in business, governmental, and cultural structures; concern about the poor and powerless; growing attention to quality of life rather than continued industrial expansion; backlogs in judicial and police administration; the rise in the administrative state; and law students' impatience with the long hours of law study when the world was changing around them.<sup>49</sup> Students proposed three specific curricular reforms, including (1) "allow[ing] each student in his second and third year to take one or more courses for full credit per semester in skills and methods of legal practice,

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44. J. Dickson Phillips, Jr., *The Law School*, 44 N.C. L. REV. 127, 135 (1965).

45. J. Dickson Phillips, Jr., *The Law School*, 45 N.C. L. REV. 152, 159 (1966); J. Dickson Phillips, Jr., *The Law School*, 46 N.C. L. REV. 71, 77 (1967).

46. J. Dickson Phillips, Jr., *The Law School*, 48 N.C. L. REV. 79, 85 (1969).

47. J. Dickson Phillips, Jr., *The Law School*, 49 N.C. L. REV. 122, 128 (1970).

48. *For the Record: Curriculum Reform*, N.C. L. REC., (UNC School of Law Student Bar Association, Chapel Hill, N.C.), Nov. 1970, at 6-8.

49. *Id.* at 6-7.

including such items as drafting wills and contracts, writing briefs and memoranda, oral advocacy and courtroom procedure"; (2) "increas[ing] the number of courses which deal with the legal context of the problems of today"; and (3) "allow[ing] students on their own initiative to qualify for admission to the bar before they receive their degree . . . [by taking] the Bar Exam early or . . . provisional admission to the bar allowing a student to work with a lawyer or to accept certain types of cases only."<sup>50</sup> The next years' deans' reports heralded more significant shifts in the UNC curriculum, including the introduction of a "small-section" program for the first-year class (coupling classes of approximately thirty students with instruction in legal research and writing),<sup>51</sup> new courses and seminars in such subjects as administrative law, social legislation, and consumer credit;<sup>52</sup> implementation of joint degree programs with the School of Business Administration and the Department of City and Regional Planning;<sup>53</sup> enhancement of practice-oriented offerings related to tax law;<sup>54</sup> approval in principle of clinical instruction in conventional courses and development of specialized clinical offerings;<sup>55</sup> and adoption of faculty legislation authorizing third-year law students to be certified under the North Carolina third-year practice rule.<sup>56</sup> The subsequent evolution of the Law School's clinical program throughout the 1980s and 1990s is detailed elsewhere in this history.<sup>57</sup>

### B. *The Curriculum Today*

The School of Law's curriculum is now markedly different from that of fifty years ago. An effort has been made to articulate the different goals that underlie each of the three years of law study.<sup>58</sup> The first-year curriculum is designed to (1) introduce law students to the rigors of legal thought, in order to assist them in developing critical thinking skills; (2) ensure that all law students are well grounded in the core subject matter that lies at the heart of the American legal tradition including civil procedure, contracts, criminal

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50. *Id.* at 8.

51. J. Dickson Phillips, Jr., *The Law School*, 50 N.C. L. REV. 75, 82-83 (1971).

52. J. Dickson Phillips, Jr., *The Law School*, 51 N.C. L. REV. 517, 524 (1973).

53. *Id.*

54. J. Dickson Phillips, Jr., *The Law School*, 52 N.C. L. REV. 575, 580-81 (1974).

55. Robert G. Byrd, *The Law School*, 53 N.C. L. REV. 959, 967 (1975).

56. Robert G. Byrd, *The Law School*, 54 N.C. L. REV. 845, 852 (1976).

57. Rosen, *supra* note 1.

58. The University of North Carolina School of Law, *Academic Advising Handbook*, 1994-1995, 1-2 (1994).

law, torts, and property law; and (3) assist students in developing important law-related skills in the areas of legal research and writing. Substantive coverage remains quite traditional, with most basic courses (other than criminal law) receiving six hours of credit and running throughout both semesters.<sup>59</sup> This approach was reaffirmed by the faculty in 1992, as a means of providing adequate flexibility in each basic course and permitting professors in both large and small-section courses to train their students in legal analysis as well as substantive law. More significant changes have been made in the first-year research and writing curriculum and its companion academic support program (LEAP).<sup>60</sup> The research and writing program is now staffed by a clinical faculty member who serves as program director and numerous adjunct faculty drawn from the ranks of the practicing bar. The course has been reconceptualized as covering "research, reasoning, writing, and advocacy," and has been divided into two parts: a one-unit fall segment that emphasizes smaller, progressive assignments geared to a series of specific developmental tasks,<sup>61</sup> and a three-unit spring segment that emphasizes more extensive writing and research, the production of office memoranda and appellate briefs, and an introduction to oral advocacy. Both segments are taught in sections of eighteen or fewer students. The research and writing director also oversees a "learning lab," which offers first-year students a menu of noncredit learning opportunities designed to assess and address areas of potential weakness and to build study and exam-taking skills.

The second-year curriculum has been reshaped to provide a transition between first-year core instruction and the culminating electives, seminars, and skills-oriented instruction available during the third year. The second-year curriculum incorporates strategic pedagogic changes designed to foster engagement and polish analytical and writing skills. Second-year students are obligated to

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59. A recent survey of curricula at other major law schools reveals that this arrangement is the clear trend, and now the vast majority of schools have reduced such coverage to four or five units per substantive course. See information on file, available through the N.C. LAW REVIEW.

60. Henry Brandis Professor Charles Daye was instrumental in the creation of the LEAP program, beginning in 1986, and in national efforts of the Law School Admissions Council and the Association of American Law Schools to develop effective approaches to providing academic support. The LEAP program was subsequently directed by Professor Barry Nakell. It has been significantly redesigned by the current Director of Research and Writing and LEAP, Associate Clinical Professor Ruth McKinney.

61. See Paula Lustbader, Presentation at Law School Admission Council Academic Assistance Training Workshop (June 4, 1992) (discussing relevant learning theory).

elect a small section in a core or elective subject, featuring specially tailored writing assignments and a 25:1 student-teacher ratio. In 1994-95, second-year small sections were offered in administrative law, criminal procedure-investigation, evidence, family law, federal civil rights litigation, immigration law, intellectual property, philosophy of law, race and gender, sales, securities, and scientific theory for lawyers. Training in professional responsibility is also a cornerstone of the second year. Students must elect one of several varied offerings that provide core instruction in professional responsibility while permitting exploration of the implications of ethical obligations in particular practice fields (such as public interest and government practice, litigation, and criminal practice). The second year is also intended to broaden students' base of substantive knowledge and to provide opportunities to begin exploring subjects of special interest that foster broader perspective on the study of law, lead to the development of individual career goals, and provide the foundation for more concentrated study during the third year. Students are encouraged to take core upper-division courses ranging from constitutional law to business associations, trusts and estates, income tax, evidence, criminal procedure-investigation, sales and secured transactions, family law, and administrative law. Second-year students may also enroll in varied electives.

Third-year students are encouraged to enroll in electives, in order to broaden and deepen their experience in the law. Electives range from banking law to children and the legal system, comparative law, consumer law, corporate finance, corporate tax, debtor-creditor, education law, employment discrimination, environmental law, estate and gift tax, federal jurisdiction, health law, housing, income tax, insurance, intellectual property, international business transactions, international law, labor law, legal history, ocean and coastal law, partnership tax, race and poverty, real estate finance, remedies, state constitutional law, and technology and intellectual property. Such electives reflect a major effort by the School of Law to increase its offerings relating to international law and perspectives on the law in recent years.

Third-year students must also enroll in a seminar of their choice (covering such topics as administrative process and advocacy; business planning; capital punishment; constitutional adjudication; constitutional theory; consumer law; corporate law; domestic law; estate planning; health policy; international law of human rights; international litigation; the judicial process; judicial review and social change; law, culture and society; law and literature; lawyers and public policy; legal

history; legal issues in higher education; national security law; ocean and coastal law; oral history of lawyers and judges; patent practice; philosophy of law; political and civil rights; property and the Constitution; studies in Russian law; Supreme Court practice and appellate advocacy; and torts). Third-year students are also encouraged to enroll in courses that provide opportunities for development of various other lawyering skills. Virtually all third-year students enroll in trial advocacy, while many also elect alternative dispute resolution, interviewing, counseling and negotiation, or pre-trial lawyering. Other students participate in the law school's summer criminal clinic or its school-year criminal and civil clinical programs. Still others avail themselves of the various practice-oriented seminars listed above, or the growing number of advanced skills-related courses in such areas as advanced family law, advanced bankruptcy law, advanced environmental law, commercial transactions (negotiating, drafting, and closing the deal), and advanced legal research. Students are also encouraged to broaden their perspectives by participating in the school's growing number of international study-abroad opportunities and in non-law school coursework related to their legal studies, during either their second or third years.<sup>62</sup>

The curriculum of the UNC School of Law has thus developed significantly in the fifty years since World War II. The core objective of training law students to "think like lawyers" and to ground them in the basics of the common law remains unchanged. In other respects, however, the course of study is significantly different. Students take many more classes in small groups and explore a much richer variety of elective offerings. There is more intensive and effective training in legal writing and legal ethics. Students have many more opportunities to develop perspectives on the law, gain insight into other countries' legal systems, and develop "practical skills."

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62. The UNC School of Law has established cooperative programs with the Universite Jean Moulin-Lyon III, France; and Katholieke Universiteit Nijmegen, the Netherlands; and is establishing cooperative programs with the Universidad de Costa Rica, the University of Manchester, England, and the St. Petersburg University, Russia. For more detailed discussion of the school's international programs, see Jerry W. Markham, *The North Carolina Journal of International Law and Commercial Regulation and International Course Offerings*, 73 N.C. L. REV. 807 (1995).

### III. THE MILLENIUM APPROACHES: PREDICTIONS AND REFLECTIONS

It is impossible, of course, to predict with accuracy the development of law school curricula by the middle of the twenty-first century. The past is ever prologue, however, and the events of the past fifty years provide some lessons that may usefully be borne in mind.

#### 1. *Pressures for curricular reform will probably increase.*

The population of law students is becoming more diverse, as the United States experiences major shifts in racial and ethnic mix, a growing number of workers seek second (or third) careers in law, those with disabilities seek the full range of opportunities in higher education, and the mobility between states and nations continues to increase. So, too, the legal profession continues to diversify as specialties proliferate and nontraditional opportunities emerge. It must also confront economic pressures associated with competition among the growing number of lawyers and economic downturns. The world changes all around us, economies become increasingly global and local, technological developments reshape our approaches to mastering and managing knowledge, and the pace of change accelerates. Universities face growing financial pressures, as competing demands limit the availability of additional public funding and a combination of tuition resistance and debt loads constrain even well-endowed private schools. Taken together, these forces will inevitably result in different and increasing demands during a time of scarce resources. Law schools designing and updating their curricula in the coming century can expect increased pressures from these and other directions.

#### 2. *The fundamental goals of legal education are well-known and unlikely to change.*

In 1969, Dean Bayless Manning observed that an "educated first-class lawyer" is trained to possess the following characteristics: analytic skills; substantive legal knowledge; basic working skills; familiarity with institutional environments of legal institutions; awareness of the total nonlegal environment; and good judgment.<sup>63</sup>

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63. PACKER & EHRLICH, *supra* note 2, at 22-23 (quoting Bayless Manning, American Legal Education: Evolution and Mutation—Three Models, Address before the Western Assembly on Law and the Changing Society, June 12, 1969).



Most legal educators would agree with Manning and would find it difficult to eliminate one or more of these important objectives. Assuming such a baseline, it might be possible to narrow a law school's mission to one or more of the following, described in Paul Carrington's 1971 report: training individuals for general practice as lawyers; training lawyers desiring special competence in particular fields; training scholars capable of interdisciplinary research; training individuals for careers in the delivery of legal services as members of allied professions; and training about law for students motivated by intellectual curiosity, by uncertainty of career goals, or by career goals in other disciplines.<sup>64</sup> Most law schools have continued to attempt to train all-round lawyers and those with uncertain career goals, while many have developed specialties in one or another area as a way of distinguishing themselves. Increasing financial pressures may well give schools an incentive to narrow their choices, but competition for a dwindling pool of law school applicants and the inertia associated with curriculum formulations adopted in more favorable times is likely to lead most schools to demur.

3. *The first-year curriculum will remain the subject of perennial debate, but will emerge with minimal change.*

Legal educators take as a tenet of faith that the first year of law school trains students to "think like lawyers," and introduces them to core subject matter. Historical experiments, at the University of North Carolina and elsewhere, endeavored unsuccessfully to separate training in "legal methods" or "legal analysis" from substantive instruction in traditional fields; it is unlikely that this experiment will be repeated while memories of these earlier experiments remain. The principal debate will accordingly continue to swirl around the substantive subject matter that forms the core of the first-year curriculum and through which students are introduced to the art of legal analysis.

The debate can be formulated in only a limited number of ways: (1) certain subject matter is so critical as a foundation for subsequent instruction that it requires a particular duration of coverage at the very outset of students' legal education (the "foundational" argument); (2) certain subject matter is particularly conducive to working with students to develop their abilities as legal analysts (the "methodological" argument); (3) certain subject matter reflects the core values

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64. See *supra* note 19 and accompanying text.

of the legal system or legal education, and should be introduced at the time when it is most likely to be retained by impressionable beginning law students (the "values" argument, one that may emerge either to support retention of traditional course offerings representing the "historical canon," or to support more "modern" alternative offerings that emphasize statutes or perspectives on the law); (4) students should be given the opportunity to elect certain alternative subject matter in the upper-division curriculum, and other fundamental subject coverage should be shifted to the first year in order to accommodate subsequent choices (the "pragmatic balance" argument); and (5) students should be instructed in fundamental skills (such as research and writing) or professional values (such as legal ethics) during the first year in view of the growing recognition of the importance of and need for such training (the "compelling priorities" argument).

Will one of these recurring arguments carry the day at last? The emerging view seems less to reflect the ascendancy of one or another of these viewpoints and more to represent inevitable compromise. The trend has been to maintain traditional core subject coverage in the first year, but to cut back on hours (often from six semester hours to four or five) in order to accommodate one or another of the competing concerns noted above. The law school of the twenty-first century is therefore likely to maintain a first-year curriculum reminiscent of the curriculum of the current decade: some combination of common law courses (torts, property, contracts, criminal law); civil procedure (perhaps redefined as "disputes and disputing" or "judicial and administrative process"); constitutional law; and introduction to lawyers' values and skills (a combination of legal ethics, research, and writing).

4. *Legal educators will continue to struggle with the problem of cohesion and progression in the upper-division curriculum.*

New areas of inquiry and new social problems will inevitably develop in the coming century, particularly in such varied and important fields as international business transactions, environmental law, nonprofit organizations, health law, elder law, and technology and intellectual property. Law faculty will undoubtedly develop new law school courses reflecting these and other current interests. Such important and beneficial trends will inevitably result in an even more wide-ranging and far-flung curriculum, compounding the problems of fragmentation and lack of cohesion that have come to characterize the law school curriculum in the last fifty years.

Modest steps may be possible to reduce students' experience of fragmentation. Faculty members can consult more carefully about overlaps and gaps between courses and can make considered decisions concerning prerequisites, corequisites, and recommended courses. Schools can adopt breadth and depth requirements akin to those of undergraduate schools, giving students freedom to elect specific courses according to their interests, but ensuring that they will receive a comprehensive "liberal" education which combines balanced exposure to varied subject matter and intensive exploration of a potential area of concentration or cohesive focus of intellectual inquiry. Schools can adopt an appropriate scale in their endeavors to foster a sense of progression and cohesion, focusing, perhaps, on the distinct purposes of the first, second and third years of law school, and the opportunities for post-graduate education, rather than losing the bigger picture through excessive preoccupation with a growing number of specialty courses. Last, and certainly not least, law schools can focus more explicitly on the need to define a coherent academic program for each student, something that is aided but not ensured by coherence within the curriculum. More intensive advising for individual students can significantly foster such coherence, particularly when approached along a continuum that explores students' interests, preferences, and developmental profiles; academic choices; and career planning.

5. *Continued progress will be made in developing effective strategies for instruction in professional responsibility and professionalism.*

Many schools continue to struggle to develop meaningful and effective strategies for instruction in professional responsibility. This area is one in which significant progress should be made, thanks to foundation efforts to stimulate curriculum enhancement and to creative partnerships between legal educators and members of the practicing bar.

The W. M. Keck Foundation has recently awarded major grants to eleven prominent law schools to develop innovative strategies for enhancing instruction in the area of professional responsibility. Many of the efforts now underway show great promise. For example, Loyola-Los Angeles has developed new videotaped materials featuring simulated fact patterns that raise ethical issues. Stanford has developed a clearinghouse for new teaching materials relating to professional ethics. Duke is developing specialized professional responsibility offerings relating to various fields of legal practice. The University of North Carolina is implementing an "intergenerational

legal ethics" program that uses oral history techniques to link law students with lawyers and judges who share their insights on the development of personal and professional values in ways that stimulate students to explore such questions on a deeply personal basis.

Other schools, such as the University of New Mexico, are experimenting with carefully structured mentoring programs, linking law students with practicing lawyers. Many schools cooperate with local Inns of Court, which bring together relatively inexperienced lawyers or law students, those with some experience, and senior "masters" to explore ethical questions and enhance litigation skills. Others, such as those in North Carolina, have cooperated with the bench and bar in innovative research projects that draw on the experiences of practitioners to define current problems in professionalism, then address those problems both in law school settings and in continuing legal education programs. Undoubtedly, partnerships such as these will generate many creative approaches that foster better training in legal ethics and professionalism during the coming century.

6. *The MacCrate report will stimulate creative strategies for "bridging the gap" that has divided academic lawyers and legal practitioners who reside at different points along the spectrum of lawyers' continuing professional development.*

The MacCrate report's call for enhanced instruction in lawyering skills and values has warmed the hearts of some legal educators and raised the hackles of others who fear that it may pave the way for more intrusive regulation by the practicing bar and for damaging reallocation of scarce financial resources. There is reason to hope that the resulting debate will give rise to constructive and varied improvements in law school curricula in the years ahead.

First, it is part of a continuing dialogue sparked years ago, one that preceded and was enhanced by the Cramton report in 1979 and that has given rise to the diverse forms of skills-related and clinical instruction present in America's law schools today. As the years have gone by, more legal educators and practitioners have become well informed about the relevant issues and more law schools have made a place for clinical teachers within their core faculties. Many states have begun to organize conclaves (bringing together lawyers and legal educators to discuss MacCrate and related issues) and sections on the education of lawyers to undertake joint initiatives under the auspices of individual state bars.

Second, law schools have varied options for preserving their autonomy. Most have already incorporated some form of instruction in the principal lawyering skills and values within their curricula and can continue to experiment with and refine their approaches, much as they have with various live-client clinical programs and diverse types of externships. Law schools are also likely to identify cost-effective ways to provide appropriate "transition education" for senior law students, featuring such approaches as team-taught seminars involving both law professors and practitioners, or advanced electives offered by carefully selected adjunct personnel. Finally, legal educators may articulate their own vision of the training needed by twenty-first century lawyers, persuasively explaining the importance of a "liberal" legal education and assisting practicing lawyers to conceive and deliver more effective forms of continuing education to those who have passed the bar.

7. *Legal educators will turn their attention to the unfinished business of preparing lawyers to appreciate the nonlegal contexts in which they may work.*

As noted above, Bayless Manning, among others, has cited "awareness of [the] total nonlegal environment" as one of the characteristics of the "educated first-class lawyer."<sup>65</sup> Law schools, including those associated with first-class universities, have traditionally treated this characteristic as one of lesser importance or one that is best left to the individual student to develop on his or her own. While a number of law schools established joint degree programs with cooperating academic units fifteen to twenty years ago, such programs tend to reflect modest investments of resources and to enroll only a handful of students in any given year. As specialization has increased, lawyers find it more and more necessary to negotiate boundaries between legal and nonlegal cultures. Lawyers increasingly need to understand the details of financial dealings, welfare bureaucracies, medical procedures, and environmental regulation in order to afford clients competent representation. Lawyers who fill the role of problem-solvers in both traditional and nontraditional settings are increasingly called upon to translate the expectations of affected parties. In short, the nonlegal environment has become increasingly important and at the same time increasingly puzzling and complex. Law students are also likely to express increased interest in training

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65. See *supra* note 63 and accompanying text.

in nonlegal fields, at least if such training is perceived as providing them with enhanced opportunities in a tight employment market, or a chance to mature and develop an area of interest before leaving the groves of academe.

Law schools of the twenty-first century will face decisions whether to educate their students about this important aspect of professional practice. Those situated in universities with strong related departments are likely to seize the opportunity to do so in one of several ways. Traditional joint or dual degree programs might be expanded to incorporate not only programs in business, but also in health, environmental studies, information studies, journalism, social work, criminal justice, social science, international studies, public policy, planning, and other fields. Alternatively, schools may experiment with minor concentrations that incorporate a more substantial blending of legal and nonlegal courses in specialized fields of study. Faculty members may also choose to team-teach courses with colleagues in pertinent fields, particularly where enrollment of both graduate students and law students would enrich the intellectual interchange. Specialized internships or summer job placements may also be more readily developed for those with contextual nonlegal training. Law schools may in addition be increasingly drawn toward more sophisticated dual-disciplinary programs as they seek to compete for more sophisticated "second career" students, including those who seek to capitalize on pre-existing background in other fields.

8. *Law schools will develop various non-J.D. alternatives, ranging from masters degrees to non-degree certification programs.*

Just as American law schools may in the future endeavor to assist their students in gaining relevant nonlegal training, so, too, they may be drawn to develop educational opportunities for those in related fields who do not wish to practice law in the traditional sense. A growing number of professionals in other fields might benefit from rudimentary training in legal method and relevant law. The practicing bar and law schools themselves may find it desirable to establish more alternative outlets for those with law-related interests who would otherwise flood the clogged legal employment market or spend three years securing a J.D. only to emerge unhappy and uncertain about their career goals. Universities, too, may attempt to induce law faculties to consider curricular offerings geared to graduate and undergraduate students, particularly in this era of downsizing, consolidation, and tight budgets. Changes in electronic media and computer technology are also likely to blur the boundaries of the legal

profession and the practice of law. Thoughtful analysts have suggested that new communications technologies will dramatically affect our understanding of "legal" and nonlegal information, allow citizens to use information that previously has been available only to members of the legal profession, and result in a "gradual and subtle change in the knowledge base of the profession and in the role and makeup of the organized bar."<sup>66</sup>

While not all law schools would be so inclined, some might see such changes as an opportunity to seize upon Paul Carrington's earlier invitation to embrace a mission involving allied professions or training of those in related disciplines. Critical questions would, of course, need answers—including how those with more limited legal education might subsequently qualify to enroll in traditional J.D. curricula and how educational offerings could be designed to maximize the benefit for both traditional J.D. and non-J.D. students.

9. *Legal educators will reaffirm the centrality of justice within the law school curriculum, and ask their students to do the same.*

Both legal educators and law students typically cite their interest in justice and the system of justice as among the reasons that drew them to the study of law. Yet, as Herbert Packer and Thomas Ehrlich noted in 1977 and other more recent authors have reiterated, law school curricula are in many cases "secularized," in a way that removes questions of collective justice and the philosophical underpinnings of justice from center stage.<sup>67</sup> Recent efforts to reform the canon of legal education<sup>68</sup> have attempted to raise the profile of justice issues throughout the curriculum. Efforts to encourage or require law students to engage in pro bono service activities, or to participate in clinical programs designed to service indigent clients, have likewise sought to bring students face-to-face with questions of justice at a critical time in their development as professionals.

The curricula of the future are likely to grapple with the issue of justice in a variety of ways. Faculty members may continue to infuse their courses with questions of fairness and justice or offer an

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66. M. ETHAN KATSH, *THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW* 218, 220 (1989).

67. See *supra* note 18 and accompanying text; see also *Symposium, The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 277 (1992) (exploring what law schools are doing to pursue the justice mission).

68. See, e.g., Frances L. Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991).

increasing number of electives developing such themes, in hopes that students will become more engaged. Students might be encouraged to elect among courses that concentrate on questions of justice from one of several vantages. A growing number of schools may urge students to undertake pro bono service, and assist in coordinating opportunities for service of this sort in conjunction with volunteer lawyer organizations. Law schools may also seize the opportunity to face head-on the pain, anger, shame, and lingering injustices associated with the American traditions of injustice to women, members of racial and ethnic minority groups, and homosexuals through all the tools at their disposal—not only the formal curriculum but also informal opportunities for training and conversation.

*10. Legal educators will develop more innovative pedagogical strategies geared to their students' multiple intelligences, incorporate new insights offered by adult learning theory, and embrace opportunities to reshape the culture of legal education.*

In the coming century, legal educators will undoubtedly become more interested in and knowledgeable about how their students learn. The evolving theory of multiple intelligences, pioneered by Howard Gardner,<sup>69</sup> will very likely have become more influential, as teachers and students in elementary and secondary schools become more cognizant of strategies for developing distinctive forms of intelligence, and as businesses place a greater premium on teams whose productivity is enhanced by diverse and complementary talents and skills. The need to train and re-train workers to compete in rapidly changing global markets will stimulate more wide-spread appreciation for the nuances of adult learning theory. There should also be a growing appreciation for the need to “coach the hidden curriculum” of modern life, so as to develop intellectual habits that incorporate higher orders of thinking capable of handling the complex comparisons and insights demanded in the “postmodern” world,<sup>70</sup> and to address not only

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69. See HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (1983). Gardner posits several forms of intelligences, including linguistic, musical, logical-mathematical, spatial, bodily kinesthetic, and personal intelligences. He views the work of lawyers as readily implicating several of these intelligences, including linguistic, interpersonal, and logical-mathematical intelligences. *Id.* at 317-19. Charles Handy has posited nine forms of intelligence, including factual, analytical, linguistic, spatial, musical, practical, physical, intuitive, and interpersonal intelligence. See CHARLES HANDY, *THE AGE OF PARADOX* 204-06 (1994).

70. See Robert Kegan, *IN OVER OUR HEADS: THE MENTAL DEMANDS OF MODERN LIFE* 271-304, 307-34 (1994).



ideas but feelings that influence student learning within the law school setting.<sup>71</sup>

How might such changes come into being? A growing number of law schools have now hired professionals with training in psychology or educational theory, either as directors of legal research and writing courses, directors of academic support programs, or directors of career development and services programs. Assistant deans for student affairs have also become more common in American law schools and assistant and associate deans have begun to have more access to professional development programs emphasizing learning theory and informal networks of colleagues with interests in such fields. Changing law student populations have also introduced a growing number of mature students who have had extensive work and life experience. Faculty members, particularly women and members of minority groups, have come to appreciate the importance of institutional culture and climate in influencing their own professional development. Taken together, such diverse influences are likely to stimulate a more self-conscious examination of how students learn, how faculty teach, and how communities foster professional and personal development for all their members.

#### IV. CONCLUSION

This essay has offered a variety of observations concerning the evolution of American law school curricula during the past fifty years, suggesting that the relatively slow rate of incremental change has nonetheless yielded a variety of improvements. Its review of the course of study at the University of North Carolina School of Law suggests that the school's educational program in recent years has paralleled national developments quite closely, while incorporating certain recent innovations that hold promise for schools elsewhere. Finally, the essay has reflected on the lingering agenda for educational reform that remains unresolved or unaddressed in today's law school curricula, and offered modest proposals for grappling with key issues in the years ahead.

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71. See SHAFFER & REDMOUNT, *supra* note 25, at 193-229.