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LEGAL ETHICS EDUCATION AND THE DYNAMICS OF REFORM

ELIZABETH D. GEE*

I. INTRODUCTION

Are ethics educators—and the course curricula they develop—failing to instruct and inspire law students, and thus, the legal community, as to the standards and conduct becoming to the legal profession? Present commentaries suggest that such coursework is missing the mark. This is so despite the admonition of Warren E. Burger, former United States Chief Justice, who said: “[e]very law school has a profound duty—and a unique opportunity—to inculcate principles of professional ethics and standards in its students.”¹

Pipkin has in fact concluded that ethics instruction is so mismanaged and chaotic and is such a failure that it, “like Hue, must be destroyed in its present form in order to be saved.”² Legal ethics courses, new to university curricula, are unbridled and clumsy when compared to the disciplined structure of other law school classes. Further, ethics programs do not share a consimilarity with the context, methodology, and material of other courses.

The need for change is a strong explicit and implicit theme of the literature that was reviewed for this report. Notwithstanding, a comprehensive examination of proposed reform is lacking. It is likely, therefore, that legal educators do not completely understand the controlling influences on legal ethics instruction and the course of its past and future evolution.

This presentation reports the findings of a comprehensive study,

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¹ Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 377 (1980).

² Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 AM. B. FOUND. RES. J. 247, 274.

based upon opinions of legal educators and authorities, who identified and analyzed needed changes in legal ethics instruction.³ This Article also reports on influences that may support or restrain such changes in legal ethics education and analyzes these forces based upon conceptual schemes from the literature on planned change.

II. BACKGROUND

The last fifteen to twenty years has seen a resurgence in concern for the ethics of the American legal profession.⁴ Critics from the profession and the public allege that lawyers lack integrity, are unwilling to police their own profession,⁵ are preoccupied with the profit motive, and make legal services unavailable to all but the wealthy. Curran, in 2,065 interviews concerning lawyer conduct and legal services, found that thirty-eight percent of the respondents believed lawyers would behave unethically or illegally to benefit their client; forty-two percent indicated lawyers were not concerned with taking action against the " 'bad apples' of the profession."⁶

Organizational activity that focuses on teaching legal ethics has intensified. Institutes, conferences, reports, workshops, and symposia promote scholarship and encourage discussion of instructional objectives, course content, and teaching techniques.⁷ For example, The Center for Philosophy and Public Policy at the University of Maryland organized a working group on legal ethics and conducted several meetings resulting in *The Good Lawyer*.⁸ Moreover, in 1983, the American Bar Association adopted the *Model Rules of Professional Conduct*.⁹ The *Model Rules* are

³ See Gee, *A Force-Field Analysis of Suggested Change in Current Legal Ethics Instruction in American Law Schools* (1985) (unpublished doctoral dissertation, West Virginia University).

⁴ Brink found that the 1970's criticism of the profession focused on access to legal services and information, whereas commentary of the 1980's emphasizes lawyer accountability. See Brink, *Legal Education for Competence—A Shared Responsibility*, 59 WASH. U.L.Q. 591, 592 (1981).

⁵ See Hood, *Renewed Emphasis on Professional Responsibility*, 35 LA. L. REV. 719, 719 (1975); Pincus, *One Man's Perspective on Ethics and the Legal Profession*, 12 SAN DIEGO L. REV. 279, 280-81 (1975).

⁶ B. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* 231 (1977).

⁷ See, e.g., *TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE* (P.A. Keenan ed. 1979) [hereinafter *TEACHING PROFESSIONAL RESPONSIBILITY*]; GOROVITZ & MILLER, *PROFESSIONAL RESPONSIBILITY IN THE LAW: A CURRICULUM REPORT FROM THE INSTITUTE ON LAW AND ETHICS* (1977); *Legal Professional Responsibility and Ethics: A Symposium*, 11 CAP. U.L. REV. 401 (1982); *Selected Articles on Professional Responsibility*, 29 EMORY L.J. 887 (1980).

⁸ See PUBLIC CENTER FOR PUBLIC POLICY, *THE GOOD LAWYER* (D. Luban ed. 1983).

⁹ ABA MODEL RULES OF PROFESSIONAL CONDUCT (1983) [hereinafter *Model Rules*].

a revision of the 1970 ABA *Model Code of Professional Responsibility*,¹⁰ which superseded the *Canons of Professional Ethics* adopted in 1908. The *Model Rules* were developed to correct discrepancies between the *Model Code* and the expected standards of lawyer performance and to allow for a more explicit statement of standards.¹¹ They have been adopted by several state bar associations.¹²

Instruction in legal ethics has been the source of much dissatisfaction among law students, legal educators, and practicing lawyers. Criticism of such legal instruction addresses a wide range of issues. Perhaps most frequently cited as problems are the *Model Code* and the *Model Rules* which, along with relevant theory, constitute a substantial part of course subject matter.¹³ Course materials also are faulted.¹⁴ Luban speculates that an ethics course is held in low esteem because materials are primarily based upon an unsophisticated professional code and materials are typically scarce and uneven in depth and scope.¹⁵ Rogers observes that materials are inadequate for the teaching of all subjects.¹⁶ However, Pipkin notes that large enrollments have spawned proliferations of

¹⁰ ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1980) [hereinafter *Model Code*].

¹¹ See Hodes, *The Code of Professional Responsibility, the Kutak Rules, and the Trial Lawyer's Code: Surprisingly, Three Peas in a Pod*, 35 U. MIAMI L. REV. 739, 745 (1981); Kutak, *Model Rules of Professional Conduct: Ethical Standards for the 1980's and Beyond*, 67 A.B.A. J. 1116, 1117 (1981).

¹² See AMERICAN BAR ASS'N & BUREAU OF NAT'L AFFAIRS, LAWYERS' MANUAL ON PROFESSIONAL CONDUCT (1986). As of July 22, 1987, Arizona, Arkansas, Connecticut, Delaware, Florida, Idaho, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota (to be effective January 1988), Oregon, Virginia, Washington, Wisconsin, and Wyoming had amended their legal ethics rules to better conform to the *Model Rules*. *Id.* at 3.

New York, however, still employs the *Model Code*. See N.Y.S.B.A. CODE OF PROFESSIONAL RESPONSIBILITY (McKinney 1975).

¹³ One commentator claims that the *Model Code* is not "a viable vehicle for inculcating ethical principles in law students and inspiring them to conduct themselves in an ethical and professional manner." Cady, *Old Wine in New Bottles—Teaching Professional Responsibility in New Settings*, in TEACHING PROFESSIONAL RESPONSIBILITY, *supra* note 7, at 224. Another commentator faults the *Model Code* as self-serving, protective of the interest of lawyers, and over-neglectful of the public interest. See Forshee, *Professional Responsibility in the Twenty-First Century*, 39 OHIO ST. L.J. 689, 696 (1978). Yet another finds it ambiguous and creating potential contradictions between professional and personal ethical systems. See Leleiko, *Love, Professional Responsibility and the Rule of Law and Clinical Education*, 29 CLEV. ST. L. REV. 641, 650 (1980).

¹⁴ Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 715.

¹⁵ Luban, *Calming the Hearsed Horse: A Philosophical Research Program for Legal Ethics*, 40 MD. L. REV. 451, 452-53 (1981).

¹⁶ Rogers, *An Approach to the Teaching of Professional Responsibility to First Year Law Students*, 4 OHIO N.U.L. REV. 800, 805 (1977).

texts.¹⁷

Some observers claim that students view the course with contempt or, at least, with a lack of enthusiasm.¹⁸ Pipkin's research suggests that students do not understand the importance of law school moral education as compared to other courses; they view legal ethics "as requiring less time, as substantially easier, as less well taught, and as a less valuable use of class time."¹⁹ Bird suggests that students dislike the course due to the content limitations which focus on the study of rules and a smattering of abstract case law.²⁰ Luban conjectures that student opposition toward the course is actually a defense since students may resist being told to behave in ways that may work against the self-interest of young lawyers.²¹ Watson proposes that students' aggressive tendencies and psychological anxieties may intensify usual teaching difficulties;²² students may fear that developing advocacy skills will warp their senses of right and wrong, or they may be uncertain as to their professional responsibilities,²³ and unable to connect ethical concepts to actual law practice.²⁴ Furthermore, students may disdain the legal profession, or simply lack interest in pursuing the subject of ethics.²⁵

Likewise, faculty may experience anxiety in teaching legal ethics. Pipkin's data indicates low morale for faculty who may also resist teaching legal ethics because their peers and students often view the course as "soft" or lacking rigor.²⁶ The possibility of being perceived as sermonizing also concerns faculty²⁷ which, lacking practical experience with ethical problems, may feel inadequately prepared.²⁸ Finally, faculty incentives are weak; Leleiko finds narrow scholarship requirements and a tenure process that does not reward necessary interdisciplinary research and

¹⁷ Pipkin, *supra* note 2, at 273.

¹⁸ Gee & Jackson, *supra* note 14, at 715.

¹⁹ Pipkin, *supra* note 2, at 258.

²⁰ Bird, *The Clinical Defense Seminar: A Methodology for Teaching Legal Process and Professional Responsibility*, 14 SANTA CLARA LAW. 241, 265 (1974).

²¹ Luban, *supra* note 15, at 453.

²² Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL EDUC. 441, 442-43 (1974).

²³ Leleiko, *The Opportunity to be Different and Equal—An Analysis of the Interrelationships Between Tenure, Academic Freedom and the Teaching of Professional Responsibility in Orthodox and Clinical Legal Education*, 55 NOTRE DAME LAW. 485, 502-03 (1980).

²⁴ Rogers, *supra* note 16, at 801-02.

²⁵ Ehrlich, *Manners, Morals and Legal Education*, 58 A.B.A. J. 1175, 1176 (1972).

²⁶ Pipkin, *supra* note 2, at 274.

²⁷ M. KELLY, LEGAL ETHICS AND LEGAL EDUCATION 5 (1980); Bresnahan, "Ethics" and the Study and Practice of Law: The Problem of Being Professional in a Fuller Sense, 28 J. LEGAL EDUC. 189, 194-95 (1976).

²⁸ Kronman, *Forward: Legal Scholarship and Moral Education*, 90 YALE L.J. 955, 955-96 (1981); Rogers, *supra* note 16, at 801.

teaching.²⁹

III. THEORETICAL FRAMEWORK

This study applies social psychologist Kurt Lewin's theoretical framework to the change environment for the legal ethics curriculum.³⁰ *Planned change* is a conscious, deliberate attempt to improve the current status of an interacting human system, whether social, cultural, or educational.³¹ Planned change, according to Winestead, "deals with developing new and better processes in relationships in response to changing needs and expectations."³² *Unplanned change*, Zaltman and Duncan report, is that which is unintended and not deliberately sought.³³ The emergence of a language dialect through a culture is an example of unplanned change; increased factory production resulting from management's deliberate intent to improve output represents planned change.

Kurt Lewin's explanation of change is generally considered one of the forebearers of the planned change theory.³⁴ He conceptualizes change as the disturbance in an existing system or field of social-psychological forces "in the organism *and* its life space, in the group *and* its setting."³⁵ He stresses that in order to predict and to understand its conditions, the "field as a whole" or the entire "constellation of forces" must be considered.³⁶

Lewin further characterizes the present level of functioning, or status quo, as being held in place by life forces. The force field is maintained in a state of equilibrium as long as the forces are at cross-tension and exert equal pressure. The equilibrium is disrupted and change occurs when certain forces gain dominance over others. Lewin clarifies that the absence of change is not a stationary condition, but rather "a quasi-stationary equilibrium; that is . . . comparable to . . . a river which flows with a given velocity in a given direction during a certain time interval. A social change is comparable to a change in the velocity or direction of that river."³⁷

The process of change, according to Lewin's analysis, moves through

²⁹ Leleiko, *supra* note 23, at 489-90.

³⁰ Lewin, *Group Decision and Social Change*, in READINGS IN SOCIAL PSYCHOLOGY (T.M. Newcomb & E.L. Hartley eds. 1947) [hereinafter Lewin, *Group Decision*].

³¹ P. LIPPIT, J. WATSON & B. WESTLEY, DYNAMICS OF PLANNED CHANGE 3-9 (1958).

³² Winestead, *Planned Change in Institutions of Higher Learning*, 9 NEW DIRECTIONS FOR INSTITUTIONAL RES. 20 (1982).

³³ G. ZALTMAN & R. DUNCAN, STRATEGIES FOR PLANNED CHANGE 10 (1977).

³⁴ G. BENNIS, K. BEENE & R. CHIN, THE PLANNING OF CHANGE (2d ed. 1969).

³⁵ K. LEWIN, FIELD THEORY IN SOCIAL SCIENCES: SELECTED THEORETICAL PAPERS 173 (1951).

³⁶ *Id.* at 174.

³⁷ Lewin, *Group Decision*, *supra* note 30, at 470.

three phases. The initial distortion of the force field can be considered as *unfreezing*. In the *moving* phase, forces continue to realign until a new equilibrium, the *refreezing* stage, is reached.³⁸

Schein and Bennis described three attitude phases that are preconditional to change. *Attitude unfreezing* is initiated by disequilibrium, or a heightened sense of anxiety, as well as by the appearance of new sources of psychological safety. An example of an unfreezing force is the creation of psychological safety for the change target. The *changing phase* moves into place once individuals acquire a new sense of security, begin to view themselves with reference to new perspectives, and identify with new models. *Refreezing* occurs when new responses become a natural part of the attitude patterns.³⁹

IV. METHODOLOGY

Three data sources were used in this study: a literature review; transcripts from previous interviews with legal ethics teachers; and current, semi-structured, personal and confidential interviews with thirty-one legal education experts and other authorities qualified to address the research questions.⁴⁰

³⁸ *Id.*

³⁹ E.H. SCHEIN & W.G. BENNIS, PERSONAL AND ORGANIZATIONAL CHANGE THROUGH GROUP METHODS: THE LABORATORY APPROACH 275-76 (1965).

⁴⁰ The following individuals were interviewed for this study: Mortimer J. Adler, The Institute of Philosophical Research; Gary Bellow, Harvard University Law School; William J. Bennett, U.S. Department of Education; Derek Bok, Harvard University; Daniel Callahan, The Hastings Center; Paul D. Carrington, Duke University School of Law; Roger C. Cramton, Cornell Law School; Alan M. Dershowitz, Harvard University Law School; Gerald T. Dunne, Saint Louis University School of Law; James R. Elkins, West Virginia University Law School; Paul A. Freund, Harvard University Law School; Charles R. Halpern, CUNY Law School at Queens College; Geoffrey C. Hazard Jr., Yale Law School; Philip B. Heymann, Harvard University Law School; Jack Himmelstein, CUNY Law School at Queens College; Andrew L. Kaufman, Harvard University Law School; Duncan M. Kennedy, Harvard University Law School; Robert B. McKay, New York University School of Law; Ronald Pipkin, Department of Legal Students, University of Massachusetts at Amherst; Norman Redlich, New York University School of Law; David Richards, New York University School of Law; Philip G. Schrag, Georgetown University Law Center; Murray L. Schwartz, University of California at Los Angeles School of Law; Thomas L. Shaffer, Washington & Lee School of Law; William Simon, Stanford Law School; Robert Stevens, Haverford College; Alan A. Stone, Harvard University Law School; Samuel D. Thurman, University of Utah Law School; Andrew S. Watson, University of Michigan Law School; Donald T. Weckstein, University of San Diego School of Law; and Stephen B. Young, Hamline University School of Law.

Individuals selected for the interview represented diversity in type of institution: variable size, public and private, prestige and non-prestige, and secular and non-secular.

Seven other legal educators also were interviewed, although the data derived was not considered a primary source for this study: Forest Jack Bowman, West Virginia University

V. FINDINGS

This discussion identifies and analyzes major proposed changes for legal ethics instruction. Also identified and analyzed are the respondents' perceptions of driving and restraining forces that may influence implementation of the suggested reforms.⁴¹

A. *Frequently Suggested Changes*

An analysis of the three data sources revealed suggestions of needed change in objectives, content emphasis, pedagogy, structure, and administration of the legal ethics curriculum. Listed below in rank order are needed changes offered in the three sources. The original interview data is considered the primary source. The individual interviews revealed 225 specified, unique changes that could be made to ethics instruction. The most frequently proposed reforms may be described as follows:

(1) *Increased emphasis on interdisciplinary content and development of supportive materials* (12 citations). This reform would enhance the integration of non-law disciplines with legal ethics subject matter. Increased attention to many other educational practices—history, theology, psychology, anthropology, sociology, geography, political science, economics, general humanities—was recommended. Although this change was most frequently cited, it was not strongly advocated by those who proposed it nor was it considered viable and feasible.

(2) *Increased emphasis on field placement and simulation teaching methods* (10 citations). Clinical programming is a current component of most law school curricula, and this particular proposal would strengthen that programming. Field placement and simulation techniques offer students the opportunity for experience in law practice. In the clinical setting, students handle a wide variety of legal problems that often present ethical dilemmas. The majority of faculty recommending an expansion of clinical offerings strongly endorsed this change and viewed it as achievable.

(3) *Increased content emphasis on moral philosophy and development of supportive materials* (9 citations). This suggested reform subscribes application of ethical theory to the analysis of legal ethics issues.

College of Law; John M. Burkoff, University of Pittsburgh School of Law; Marie Faylinger, Hamline University School of Law; Leslie Pickering Francis, University of Utah College of Law; John K. Morris, University of Utah; David Riesman, Department of Social Science at Harvard University; and Carl M. Selinger, West Virginia University College of Law.

⁴¹ The reader is reminded that these findings only present and analyze respondents' perceptions and not the investigator's first-hand observations of the considered situations. Since constant reference in the text to this distinction would be cumbersome, this discussion assumes the reader will bear in mind this qualification.

Interviewees identified concepts of confidentiality, paternalism, autonomy, and the requirements of justice as examples of relevant philosophical perspectives. Individuals questioned for this study observed a number of present changes: faculty who are formally trained in philosophy are beginning to move into the teaching ranks; useful course materials are being published; and opportunities have become more available for the professional development of faculty with regard to moral philosophy. Of all changes cited in the interviews, the last point was said to be advocated the most.

(4a) *Increased content emphasis on popular and classical literature and development of related materials* (7 citations). Interview discussants offered only a few examples of literary works that would be useful for teaching legal ethics. *To Kill A Mockingbird*,⁴² *Moby Dick*,⁴³ and *A Man For All Seasons*⁴⁴ are examples of literature interviewees viewed as potentially sensitizing students to the often obscured ethical dilemmas of professional circumstances. Biography was advocated as a tool for enhancing student identity with lawyers who behave honestly in their professional dealings. Although mentioned frequently in the interviews, compared to many other change proposals, increasing emphasis on literature was not recommended as an important reform.

(4b) *Development of law school institutional ethical commitment and agenda for action* (7 citations). This proposal was not as well-defined as other change proposals, and it assumed an assortment of forms. In the broadest framework, faculty, students, and all school administrators could together debate ethical issues and problems relating to their professional or educational careers. From this interaction, ethical standards of conduct could evolve. A strong communal emphasis on ethics was encouraged. The narrowest recommendation was that law schools develop policies that signal to students the institutions' support for particular concerns. One example would be re-establishing admission criteria.

(5) *Increased recognition that the goal of instruction should be to enhance student ethical self-identity* (6 citations). The interview data suggests that an important purpose of legal ethics instruction should be to enhance the ethical self-understanding of students. Proposals range from helping students develop their own personal ethical norms to encouraging appreciation of the centrality of ethics in professional life. Instructional techniques used to enhance student self-identity primarily are those emphasizing self-disclosure and interpersonal communication skills. Journal writing, role playing, and clinical experiences are common mechanisms used to foster student moral self-identity. Advocates strongly in-

⁴² HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

⁴³ H. MELVILLE, *MOBY DICK* (New York 1851).

⁴⁴ R. BOLT, *A MAN FOR ALL SEASONS* (1960).

sisted that law schools should develop programs to enhance student self-awareness, although several expressed doubt that law schools would ever devote serious attention to this type of change. This proposal was the most strongly contested by non-advocates.

(6a) *Sequence legal ethics instruction in the first year or early in the law school curriculum* (5 citations). Most references to early sequencing were to first-year scheduling, although a few specifically recommended offering instruction in the second year. Some recommendations were unspecific about whether or not instruction should be offered in the first or second year and merely proposed sequencing "early in the curriculum." Justifying early sequencing is the assumption that first year students are more psychologically impressionable about their role as law students and future professionals. The first year was characterized as having a socializing effect that may positively influence student ethical sensitivity and commitment. Advocates of this reform believe that priority sequencing sends a message to students that the course is important and to be taken seriously.

(6b) *Infusion of ethics into the entire law school curriculum* (5 citations). This proposal would bring ethics to the center of the formal law school curriculum. Discussion of the pervasive method of instruction—the incorporation of some ethical content into all traditional curricula—is not considered as evidence of this suggested change. Generally speaking, the proposal considered here has become more recently advocated than the pervasive approach. This suggestion requires that ethics become central to formal law school studies. And there is a distinction between this proposal and one that would develop a law school institutional ethical agenda; namely, that the *infusion model* focuses on vertically strengthening the formal curriculum, whereas the *corporate model* is more horizontal in its concern for social and other educational contexts.

However, it should be noted that advocates of this change also tended to support a corporate concept and reform that would challenge the ethical assumptions underlying legal education. Although this proposal is strongly advocated, it was not viewed as viable.

(7a) *Challenge to the ethical assumptions underlying legal education by the legal ethics curriculum* (4 citations). The four individuals who cited this change also advocated the previous two. Advocates of this proposal argued that the legal ethics curriculum should expose alleged hidden ethical assumptions which underlie law, the legal system, and the structure of legal education. Some of the proposal's proponents claimed that an implicit ethic is expressed in the hierarchy of law school courses and reward systems which push students toward institutions serving upper and middle socio-economic classes; supposedly, the legal education hierarchy transposes into a professional hierarchy once students enter the world of law practice. The interviewees primarily discussed the inadequa-

cies of the current legal system rather than the form the change would take.

(7b) *Increased practice experience for faculty* (4 citations). This change would increase practice experience as preparation for teaching legal ethics. The most often cited reason for this requirement is that it would provide faculty with first-hand experience with ethical problems that students will face in actual practice. Few observers identified potential forces attending this change.

B. Forces Influencing Proposed Changes

This study identified two types of forces that influence reform in legal ethics instruction. Some factors are unique to a few or even a single proposed change; others are generic driving and restraining influences that are common to most or all suggested changes. Generic forces were recognized as having a generally pervasive effect on the curriculum.

Many student personality traits would affect any curriculum change. Legal educators cited some contrasting student characteristics; students are both humanitarian and unethical, idealistic and cynical, well-educated and intellectually unprepared for ethics education. They also were seen as disinterested in coursework unrelated to bar examinations or law practice. Although mostly depicted as dissatisfied with ethics courses, interviews conducted for this project suggest that students are becoming more accepting of law school ethics programs. The increasing numbers of women entering law school as students and faculty is a reason given for increased student support of ethics education. Women were characterized as having greater concern than men for ethics:

They tend to be better motivated. It is very clear it means much more to them. I do think a lot of the issues central to their self-identification as women, particularly as modern women, are very much involved in law and equal rights, abortion, etc. As a result, they are extremely well-motivated and tend to perform better. . . . They are wonderful students. It means more to them. For most men, aside from various minorities, it doesn't mean that much; whereas for women to discuss equality, is to discuss their whole life. They are really talking about themselves as much as about society.⁴⁵

It was also suggested that students experience high anxiety while in law school; they lack confidence or self-esteem and wonder if they can live truthful lives within the requirements of the adversary system.

Faculty exert great influence on the curriculum and, therefore, are important to any reform equation. This study found several inconsisten-

⁴⁵ Personal Interview. Hereinafter all quoted material from the transcripts from previous interviews with legal ethics teachers and from personal interviews will not be cited. However, citations from the literature review will be provided. See *supra* notes 40 and 41.

cies in educators' assumptions about fundamental ethical concepts. The following excerpts illustrate faculty disagreement about the conditions of ethical behavior:

I don't think of morality as an attribute of a person's soul. I think of it as a course of conduct. There are some people who are . . . awful, but in general there are more or less moral courses of lawyering conduct. So, at the abstract level, a good lawyer is just a person who doesn't commit all sorts of immoral acts in his or her life as a lawyer. The minute you get more specific than that, it is difficult to make any more generalizations. I don't regard ethical behavior as moral behavior. If the law says there is a man in the house and they are not married and, therefore, we are not going to give welfare, I don't regard that as a rule of morals that one would support ethically. You now got me thinking about what I mean by ethics, which is essentially treating people fairly.

Faculty also contested the ethical significance of lawyer conduct:

I always thought Watergate was a joke. Let me say for my own part that the vast numbers of lawyers were all crooks and always have been.

I am deeply concerned about the ethics of the profession. I really am very worried that at the moment we appear to be becoming so obsessed with efficiency and competence. The ethical values and social conscience of lawyers seems to me to be slipping.

A frequently cited generic factor was the difficulty some faculty experience in teaching an unfamiliar area of law. Most instructors lack formal training in ethics and, as a result, feel uncomfortable in the classroom. The following observation by an ethics instructor illustrates this point:

Oh yeah, I rub their nose in it [a moral problem] . . . But I think what I'm trying to say is, I don't allow any discussion of it. I force them to realize that it's there, and then I quit. Why don't I allow any discussion of it? To tell you the truth, I think it makes me uncomfortable. I don't feel comfortable leading a discussion like that . . . I don't even know how to lead the discussion without somehow commenting on how I feel.

Most commentators believed administrative policies influence the credibility of ethics courses. This study found that current grading, credit requirement, and sequencing policies affect faculty and student regard for such instruction.

According to the surveyed sources, law school reform is inhibited by a network of conservative, elite, legal education institutions and a system of pre-entrance and post-graduation requirements. The following describes characteristics of these interconnected structures:

Well, you take all the elite law schools. They are an integral part of a really tight network of institutions. They support each other, and limit each other's potential for change. They are also part of a larger network that is resistant to change. The larger network includes law firms, judges who have

clerkships to allocate, pre-law advisors, and the Educational Testing Service As alumni fund raising has become more critical, law schools don't want to do anything to offend alumni or do anything that is going to make their students less likely to be affluent givers in the future.

Five interviewees remarked that this network is supported by law school status criteria, including tenure standards, law review election, and clerkships with judges and prestigious firms.

Generic factors characterized as sustaining professional support for ethics instruction include the increased incidence of malpractice litigation, court rulings on lawyer conduct, and increasing competition among lawyers. However, professional norms were regarded as discouraging active self-policing:

I talk to former students who are in various kinds of law firms where a wide range of ethical misconduct is prevalent. The incentive not to blow the whistle is just extraordinary.

Cultural and political forces were said to influence the curriculum. Public criticism of lawyer misconduct was attributed to the growing cultural concern for moral values. The government's de-emphasis on the delivery of legal services to broad social classes was seen as affecting the curriculum's attention to social justice issues.

C. Individual Force-Field Analysis for Frequently Suggested Changes

The following discussion analyzes the driving and restraining forces which were portrayed as influencing specific needed change in legal ethics instruction. Most identified forces are non-generic, although some generic influences also are reviewed. Analyzed are force fields for ten suggested changes most frequently cited by the interview data. They are discussed in descending rank order of citation frequency.

(1) *Increased Emphasis on Interdisciplinary Content and Development of Supportive Materials.* Most pressures, identified as influencing this innovation, focus on faculty concerns. Student attitudes and administrative contingencies also were indicated. Most interviewees did not specify the precise nature of the interdisciplinary subject matter, teaching methods, or materials. Greater interdisciplinary interaction was offered as a means for generally enriching the law school. One interviewee contrasted the benefits of more integration between the law school and university with the vocation orientation of current legal education:

I think we are under enormous pressure from the bar all the time, because our income is heavily dependent on the fact that we can turn out students whom these firms need and who make quite remarkable salaries. That is in large part why we are the strongest part of the universities. . . . But of course, it absolutely is contrary to what a university is supposed to be doing

in training independent-minded people who are supposed to both be capable of working in their society, but also having a critical input. I regard that as the justification for universities, both historically and today. Why not go back to apprenticeship, really? In many instances, they probably could teach them better than we can. . . . You see, it could be such a rich thing, if some of the things in law could filter down into the university, and some of their things could filter up. It is dreadful isolation. It would enrich the university, and it would enrich the law school. It is a dreadful situation.

The increasing complexity of the law was portrayed in the data as a strong force that begs interdisciplinary attention in the teaching of legal ethics. Proponents also justify the need for more interdisciplinary approaches based on the law school's obligation to address the multi-dimensional nature of the legal delivery system:

Even little things show how variegated it [the delivery system] is, and how far it goes beyond just the ethical dimension and understanding problems of fairness and equity as what defines the problems of the legal system, and distribution of legal services as problems in our mind. But solving them goes, of course, way beyond ethics.

Increasing scholarship and discussion of delivery system issues by legal educators, advocacy of such issues by higher education and legal education leaders, and an interdisciplinary research program at Harvard Law School which prepares course materials dealing with this system issue are generating interdisciplinary activity.

Nonetheless, the history of past law school interdisciplinary teaching and scholarship is not particularly encouraging for the proposed change. Although Legal Realism, the social science activity of the 1920's and 1930's, as well as the broader academic interdisciplinary movement of the 1970's, sought to integrate law with other disciplines, many cooperative endeavors were defeated. Eventually the movements faded, and excitement diminished over black studies, women's studies, and other curricula generated by the civil rights and social cause movements of the 1970's.

The lack of financial resources that many institutions have available to support such endeavors was also cited as a significant influence. Observers frequently stated that increased emphasis on interdisciplinary content and development of related materials would require forfeiture of other essential instruction. For example:

Some professors would welcome it [greater interdisciplinary approaches], but I guess I have a feeling that a majority might be disinclined, partly . . . because they don't feel comfortable with it, and partly because they cannot cover adequately the materials that are available.

One commentator indicated that law schools would be engaging in a form of elitist rationing by giving priority to esoteric interdisciplinary subject matter over skills training that may enhance delivery of legal services to

the poor.

A strong restraining force is faculty anxiety and conflict about teaching which may require new competencies and cognitive orientations that provoke feelings of inadequacy and loss of authority. According to one observer, faculty fear that students may view interdisciplinary courses as lacking rigor.

This study also found that faculty may resist teaching and research in order to protect professional boundaries and status. Tenure criteria for scholarship and teaching are restrictive. Faculty are narrowly trained and not professionally socialized to call upon non-legal expertise or use non-legal materials. Traditional legal doctrinal analysis and dispute resolution, unlike many other areas of scholarship, are narrow and isolated processes that do not require comparative techniques. The following statements are illustrative:

In my own view, the deepest problem in legal education is that legal academics are just lawyers. While they are superbly trained as lawyers, and often I think very intelligent people, they do not have any other perspective to bring on the subject. So law school is a strange anomaly in a university. They are in a university, but they are not really university educated I think it is a paradox because the law is a genuinely learned profession Yet, you have these people who because of their training are very unsuited, really, to a certain kind of university, humanistic, holistic approach to education. They are very disabled from doing it.

The history of legal education is a significant constraint to interdisciplinary activity. Legal education traditionally was provided by the skills-oriented apprenticeship system. Only recently, law schools were made a part of the university and assumed the apprenticeship function. This vocational orientation did not require nor encourage cooperation with other disciplines. While there have been some attempts at interdisciplinary activity, most have not been sustained. Consequently, innovators may be discouraged from considering interdisciplinary scenarios by this history of failure.

(2) *Increased Emphasis on Field Placement and Simulation Teaching Methods.* The data indicated that legal educators have a comprehensive understanding of the full range of elements that may facilitate or inhibit this suggested change. In contrast with other proposals, legal educators appeared very conscious of the various components of curricula change, including administration, course content, and teaching methodology. At the same time, those involved in field placement and simulation programs may not devote serious attention to interrelating course objectives, content, and instructional methodology.

Clinical programs cover a significant range of subject matter. In this setting, students handle cases that involve numerous legal issues, includ-

ing problems which present ethical dilemmas. Additionally, clinical programs often provide training in a variety of lawyer's tasks, such as interviewing, counseling, and employing negotiation techniques. Some reported benefits to students include the opportunity for first-hand experience with ethical problems, in-depth analysis of specific legal issues, and immediate feedback on performance. Strong student interest in actual law practice can be a powerful driving influence. A primary student complaint is that non-clinical doctrinal instruction lacks vocational relevance and is too abstract to be meaningful.

According to this study, the legal profession provides several levels of advocacy for clinical education programs. Practicing lawyers support them because vocational skills are sharpened; these skills are not often cultivated in traditional courses. Further, the bar's interest and backing may continue to grow because clinical instruction requires the participation of practitioners in the learning process.

The presence of clinical programs, already established in most law schools, albeit in various forms, are important promotional forces. The current expansion of clinical programs provides an imposing deterrent against those who would restrain further growth. Nevertheless, a few legal educators would oppose any expansion of clinical programming. Some strongly criticized it as too different from practice to be useful:

Simulation is looked down upon because of the view that you can't replicate or simulate professional responsibility. The clinical experience, however you do it, is simulated. It is true that the student doesn't face the real responsibility to the extent that the student does in the real client contact situation Neither pure field work nor simulation models conform to reality. Because faculty supervision is diminished in the pure clinical setting, the student never has 100 percent of the responsibility. In simulation, because it is simulation, we do give students 100 percent of the simulated responsibility.

Many ethical issues do not arise in clinical settings; thus it is difficult to ensure coverage of all issues. For example, law and society issues are not usually stressed:

I think the clinical approach is probably good. The difficulty again, I think, is that I would like to see some attention paid to larger social questions of law and society. I don't think that those are the kinds of issues that arise in a strictly case approach or clinical approach.

A review of legal educators' perceptions indicates several areas of force contradiction. Controversy over the status of clinical faculty was significant. Increased acceptance of clinical instructors by traditional faculty was reported as compelling the proposed change. Discussion characterized clinical faculty as full colleagues who receive equivalent salaries yet also as having low status. They are sometimes viewed as nonconformist and as representing leftist political ideology; or they may be regarded as inferior

in their theoretical and analytical orientation, writing ability, and general scholarly competence—attributes stressed by tenure and promotion criteria. Clinicians were frequently portrayed as not having jumped traditional academic hurdles, namely election to law review, graduating in the top percentile from an elite school, or serving a judicial clerkship:

[T]raditional law teacher[s] . . . [believe] that clinical teachers have nothing of interest to say about the operation of the legal system. This view is based on two facts: As a group, clinicians did not do as well in law school as traditional faculty, and clinicians do not write.⁴⁶

Several educators reported that traditional faculty are not practice-oriented, but instead contemptuous of law practice, even preferring an academic career out of psychological aversion to practice:

Traditional [faculty] have this ancient phobic reaction to practice, because most academic lawyers have not practiced. And the reason is they are scared to death of it. That is me interpreting. They would never acknowledge that. The fact is, when we in the clinical area try to get them involved, they shy away like they are being invited to consort with the Devil.

Faculty lacking formal clinical training are portrayed as uncomfortable in clinical settings because they cannot rely upon familiar jargon or teaching methods:

The realization that the students may demand some insight into the system and that the professor may not be able to supply it exacerbates the present situation. One cannot hide behind "legalese" and "scholarship" when teaching in the clinical setting. There are no absolutes, no concrete answers. . . . Multiple strategies must be employed to attain a goal, nothing is given; approach and manipulative abilities often bring the desired result although doctrine or legal principles should have easily resolved the issue. It is perhaps partly a fear of attempting to teach something without having first experienced it that is frightening to many teachers who have a vested interest in keeping the present system intact.⁴⁷

Several restraining forces appear formidable in terms of their potential to influence the suggested change. A significant impeding influence is competition from other courses and time constraints. The current demands of clinical programming on time and resources are already viewed as infringing upon other necessary courses and activities:

[B]ecause students in a clinic normally are simultaneously enrolled in courses, the clinical supervisor is frequently engaged in a process of negotiating for a student's time in direct competition with an examination sched-

⁴⁶ Condlin, *Clinical Legal Education in the Seventies: An Appraisal of the Decade*, 33 J. LEGAL EDUC. 604, 607 (1983).

⁴⁷ Bird, *supra* note 20, at 248-49.

ule or in implied competition with more senior tenured faculty members who regard their course assignments as sacrosanct.⁴⁸

The potential lack of financial support must be viewed as a strong inhibiting force. The funding of current and future clinical programming still remains somewhat tenuous, particularly given the strained financial conditions of many law schools and the fact that most programs are funded directly by law school budgets.

This study suggests, then, that students may find useful and interesting legal ethics instruction based upon experimental methodology. Students are more likely to learn when they find a particular learning experience enjoyable and relevant to their own interests. Faculty and administrators, in turn, are rewarded by positive student responses. An essential element in the maintenance of professional status is clear professional boundaries. Professional status may be questioned if the boundaries fluctuate or appear penetrable. Forces challenging the legitimacy of clinical faculty, indicated in this study, may represent tactics to protect boundaries.

Strong professional support for clinical programming may have positive consequences for legal education. Law schools often have been viewed by the profession as overly academic, theoretically oriented, and not providing sufficient instruction in practical skills. Perhaps clinical education's emphasis on vocational preparation and involvement of legal practitioners will reduce tensions between the bar and law schools in a way that encourages greater collective support of legal education and channelling of resources to important needs.

(3) *Increased Content Emphasis on Moral Philosophy and Development of Supportive Materials.* Needed changes in the current interview and literature review data were frequently cited. Increased content emphasis on moral philosophy in legal ethics instruction and development of related materials was suggested. This did not apply to transcript data. Proposals for course content, teaching materials, and instructional techniques were highly diverse. Moral philosophy was strongly cited by many legal educators as a means of enriching and broadening the analysis of legal ethics problems. However, others challenged the usefulness of moral philosophy and the relevance of its application to legal education. One line of criticism viewed problems of lawyer conduct as specific, situational, and irreducible to the generalizations and principles of moral philosophy.⁴⁹

⁴⁸ Cahn, *Clinical Legal Education From Systems Perspective*, 29 CLEV. ST. L. REV. 451, 469 (1980).

⁴⁹ In a personal interview, one observer questioned the objectives of legal ethics curricula that emphasize moral philosophy:

It seemed to me at the time that in many of these efforts to put ethics into the

A proposed benefit of moral philosophy instructional methodology is the enhanced use of Socratic dialogue in the classroom. Critics claim that at present it is not correctly used in legal education. Moral philosophy's strong pedagogical and analytical grounding in Socratic argumentation may sharpen students' and instructors' abilities to engage in dialectic discussion:

It [the Socratic method] is a joke in law school. . . . Much of it is just rhetoric, and is not Socratic in any stretch of the imagination. . . . Yet, it is the first experience our students will have had with anything like it. So again, it has a moralizing effect. Even to see that there can be two sides to a question, and that opposing points of view can work themselves out to common premises, which I think happens in legal reasoning all the time. That is the Socratic method. I think [faculty] training in moral philosophy would deepen our capacity to use it.

A danger identified in the data is that the inexperienced or incompetent teacher may not adequately and appropriately address the moral philosophy subject matter or, in the extreme, may resort to sermonizing or advocating relativism:

But I have a feeling from most of the things that I have seen, when it gets to that point, which is the real nub of the issues, many of the law professors say, "It is up to you. I am just here to frame the issues, not to make personal choices or exhortations. That is your own business." Well, that kind of stepping back — "I will not interfere" — is understandable, but one must recognize they are stepping back from the nub of the issue and not the issue Socrates would have backed away from. . . . If you get someone teaching professional ethics who is a relativist, how much can you hope for? Not much.

In addition, law students were characterized as lacking the argumentative skills or reflective ability necessary for philosophical analysis. As undergraduates, most students are not exposed to moral philosophy. Several observers noted that pre-law counseling and admission criteria do not sufficiently emphasize skills that would enhance intellectual readiness for philosophical discourse.

Both the literature review and interviews indicated that moral philosophy is gaining in legitimacy as an important subject for legal ethics curricula. Notwithstanding this fact, strong countervailing forces may hinder this reform's implementation. Luban argues that the lack of

curriculum, that many of them floundered on a confusion. . . . That is, was the point to make people more reflective, more philosophical, to make them better ethical philosophers, more thoughtful, or better at causerie, more skilled in the give and take of ethical debate, the recognition of ethical issues, and training in that area. Or, was the effort to make people behave better. I think many of the programs that I saw tended to collapse the two, and thought that by doing one, the latter would be a result.

materials and publication opportunities in philosophy are still very limiting:

The need for new curricular materials in legal ethics has become evident. . . . A recent survey of over 1,300 students indicated that the professional responsibility course is held in "low esteem" Much of this low esteem can be attributed to the nature of the material.⁶⁰

According to one interviewee, the tendencies of law to resist adaptation to outside influence and of philosophy to repel encroachment from other disciplines are also destructive influences in the force field:

The teaching of ethics in philosophy is just as impoverished as the teaching of legal ethics in law. The expectation is that the philosophers really do talk about the big question. How should we live our lives? How should we practice our profession? What should we be doing?

What you find is that philosophy has degenerated to the point now where they don't even bother to take up those questions. . . . We've got a technological-oriented university; we've got fragmentation and compartmentalization of knowledge into disciplines that are as narrow bound as you can get. We've got philosophy with its adherence to the analytical orientation. They have given up on these bigger issues. This is one of those kind of situations where we can't save the idea of legal ethics by simply appealing to what is going on in philosophy, or the teaching of ethical theory, or the teaching of ethics in graduate school, or even the university itself.

Another resisting force is the increasing trend toward a legalistic and positivist approach to ethics. Efforts to resolve ethical dilemmas by reference to set codes, laws, or rulings are viewed by some as ignoring, sidestepping, or denying the true moral issues. Several forces appear to be supportive of the legalistic trend. According to Schwartz, a general historical movement in the profession toward increased emphasis on formal standards and away from moral principles is evident:

The Model Rules in their present form represent the culmination of an historical process that began a century and a half ago: the shift from articulating professional standards, suffused with ideas of morality and ethics, and enforced if at all by informal sanctions and peer pressure, to enacting comprehensive and explicit legislation attended by formally imposed sanctions for breach.⁶¹

If the trend toward a positivist or legalistic approach to ethics represents a developing pattern, the current interest in moral philosophy may be a reaction to perceived excesses of such a trend:

What we get is layer after layer, accretion of more and more rationalistic,

⁶⁰ Luban, *supra* note 15, at 452.

⁶¹ Schwartz, *The Death and Regeneration of Ethics*, 1980 AM. B. FOUND. RES. J. 953, 953-54.

linear, analytic, operationalized, objective sort of ways of approaching knowledge, until we get to a point that somebody starts screaming: "That's enough!"

Thus, tension in the change environment is created by the opposition of two strong forces—increasing legitimacy of moral philosophy and the tendency of law schools to repel outside influences. The discipline of moral philosophy also resists change in its boundaries. The tendency not only for law but for other disciplines to repel outside forces may suggest that academic disciplines are generally more interested in their own refinements than in connecting with other fields of learning.

(4a) *Increased Content Emphasis on Popular and Classical Literature and Development of Supportive Materials.* The data disagreed on the value of teaching literature. Discussion was primarily concerned with instructional objectives, although incompatibilities in course content and teaching method were also considered. The force field for this suggested change lacked complexity. Forces portrayed in the data were concerned with only a few elements of curricular change, namely course objectives and faculty or student preparation. Only a few forces were identified that drive toward or restrain the proposed reform.

The objectives of instruction that would incorporate classical or popular literature included reducing student hostility and anxiety, increasing student self-identification with the lawyer's role, and humanizing legal ethics problems. These objectives were seen as achievable because of the power of literature to evoke emotion and feeling. Biography was particularly stressed as a vehicle for enhancing student self-identity with lawyers who have behaved ethically in their professional dealings:

Biography poses interesting technical questions that go beyond technicalities and rules, and have the virtue of not only humanizing problems, but have a potential for inspiration without preaching. . . . It is my experience that students find it easier if you talk about lawyer images and self-definition in terms of fictional heroes, protagonists and so on. . . . Some days you detect the passion in their voice as they talk about these figures, and they are really talking about themselves. . . . So it has power—the notion of your life as a story and narrative, a miniature of yourself.

Controversy arose over faculty preparation requirements. Some observers suggested that no extra formal training in literary analysis is necessary. Others maintained that significant extra preparation would be required. The data identified several strong forces that may inhibit the reform. For example, the cognitive skills of students and faculty are supposedly incompatible with those required for literary analysis; faculty are emotionally insensitive; and, students and faculty are so explicit and rational in their thinking as to disallow non-linear, imaginative, and intuitive analysis.

Legal educators' apparent lack of recognition of potential forces influencing this proposal might indicate that the suggestion to increase the use of literature in legal ethics courses is not taken very seriously. Alternatively, they may view popular and classical literature only as useful or incidental supplementary material or may believe it fruitless altogether to promote this change because of obvious barriers.

(4b) *Development of a Law School Institutional Ethical Commitment and Agenda for Action.* One commentator argued that law schools should develop institutional personalities that signal to students the importance of addressing important social concerns:

The point is that law schools develop institutional personalities, and every policy, every decision, and every attitudinal nuance expressed by a law school affects the process through which law students formulate and redefine their professional and personal self-image. . . . By its actions, a law school can signal its highly alert student body that the responsible professional attitude is one of sensitivity to social problems and commitment to their just resolution. Law schools should seek to be leaders rather than followers when it comes to recognizing and dealing with social issues affecting the law school community—issues such as race, sex, age, and handicap discrimination. Such an institutional attitude can go far toward minimizing the alleged tendency of legal education to foster attitudes of indifference to social problems and social justice.⁵²

Another reform called for the development of a specific institutional code of ethics for faculty, students, or both. Increased attention by faculty to the character and ethical consequences of their own behavior frequently was cited as important to developing strong communal emphasis on ethics:

We would have little difficulty drafting a Code of Professional Responsibility for law teachers. It would be the analogue, in an academic setting, for similar codes that guide the professional conduct of lawyers and judges. The text would embrace conduct that one would expect of professors generally, and also set forth responsibilities that flow from the unique position of law schools within the legal profession. Law teachers should start and finish classes on time Deadlines for articles should be met. . . . Law teachers should treat each other with courtesy.⁵³

At the root of these proposals is an assumption not clearly addressed in most of the other suggested reforms: the ethical conduct of students might be positively affected by corporate commitment.

Several arguments against the suggested change were offered. One in-

⁵² Hellman, *Considering the Future of Legal Education: Law Schools and Social Justice*, 29 J. LEGAL EDUC. 170, 193 (1978).

⁵³ Redlich, *Law Schools as Institutional Teachers of Professional Responsibility*, Tape-recorded remarks at the Annual Meeting of the Association of American Law Schools (1984).

interviewee noted that faculty role models in the law school environment are inconsequential; students reportedly do not view instruction as influential, nor are faculty presented with significant moral dilemmas that could provide occasions for meaningful modeling of ethical conduct. In fact, a possible barrier to this change is the reported negative role modeling by faculty, administrators, and fellow students. For example, one interviewee complained that deans affix their signatures to diplomas when they know a student is not competent:

Nevertheless, they can just get by every year. They are not kicked out scholastically. When the dean puts his signature on their diploma, he knows to a moral certainty this person will never hack in the law, never ever.

Another expressed concern is that community-maintaining structures—such as informal relationships between faculty and students, cooperatively sponsored projects, discussion groups, and formal codes or procedures—would likely be unfamiliar and unclear. Ambiguity in authority lines and interpersonal relationships may be uncomfortable and intolerable for the involved participants. Also characterized were problems that administrators might face in developing reward and sanction policies to enforce effectively the institutional ethic.⁵⁴ Finally, reservations were expressed for a canon of formal code of professional standards for law students, faculty, and administration:

I think that would take some doing. One could develop some canons, like the old nineteenth-century canons. They were very abstract, pious statements. You can do that, and check off maybe a half a dozen or ten half-blown academic obligations. If you tried to write anything that looked like a code of professional responsibility, and a code implies some enforcement process . . . and some kind of sanctions to be visited on faculty members . . .

⁵⁴ As noted by one interviewee:

It is real hard to imagine a law school dealing with breaches of professional responsibility differently according to whom the violator is. If the person you got is widely esteemed and a great teacher, or a great scholar, and he also happens to be an SOB who does a lot of rotten things, that is real hard to deal with. If you are not prepared to deal with that, then trying to tighten the screws on ordinary mortals who have the same status, but not quite the same recognition, becomes discriminatory. If you are not prepared to fire the Nobel Prize winning physicist for abuse of power in his relationships with students, where do you get off dumping the associate professor? So that probably is not going anywhere in the near term There is a lot of [sexual relations between faculty and students] going around, and people don't seem to want to face up to that. One of the questions is, what do you do about it? Suppose you have a good clear case, and the fact is that deans are not in very good situations to do very much because you really have to deal with it frontally. That is, the only thing you can do is lay your body down on the railroad track. Most of the things that deans deal with have a way of getting on the agenda in the right committee, and there is some kind of way of absorbing some of the odium for having to deal with it. But this is one there is no place to go with.

I think you would get into some serious problems.

A strong barrier identified by this study is the professed hierarchy of legal education and of the law profession. A subsequent section of this report characterizes this structure as based upon a reward system of grades, law review assignment, and prestigious law practice. The discussion suggests that law school pedagogy contributes to the hierarchy. For example, the Socratic method purportedly allows faculty to control and manipulate students. Accordingly, efforts to achieve any kind of communal relationship with students would be seriously hampered by implicit systems that protect authority lines and discourage communication. If the development of a communal ethic requires a democratic ethos or two-way exchange through participatory social structures, a hierarchy would represent a powerful impediment. Indeed, student and faculty hierarchical structures may encourage individuality and autonomy rather than collegiality.

(5) *Increased Recognition that the Goal of Instruction Should be to Enhance Student Ethical Self-Identity.* The literature and interviews suggested that an important purpose of legal ethics instruction should be to enhance students' ethical self-understanding. Commentators indicated some need for greater emphasis on self-identity questions because most students experience conflict anxiety in their educational experience and their professional aspirations. One area of conflict is the threat to the sense of right and wrong. According to one observer, students fear that by accepting the requirements of the adversary system, they will abandon their principles of right, fairness, justice, and truth: "Many law students worry that as they become skilled advocates, they will lose their concern for what is true and right, and become preoccupied instead with what convinces or persuades."⁵⁵ In addition, students experience conflict between their materialistic and humanitarian motivations for pursuing law careers. Observers also indicate that the meritocratic structure of law schools produces ethical conflicts for which sources of ego-support are lacking. These schools value peer approval, high grades, law review participation, and prestigious summer clerkships or job offers with corporate law firms.

Then they come here and their self-confidence suffers because there are a lot of bright students here. By the end of the first year the pressure for the best jobs and the most lucrative summer employment begins to take hold. It takes hold at exactly the time they are feeling extremely anxious about having to perform, and are they really as good as everybody else. Everyone understands that they didn't deserve all the A's they got all their life.

⁵⁵ Kronman, *supra* note 28, at 964.

Although there are some foundational theories to support this proposed change, only a few observers claimed that available scholarship is an adequate conceptual basis for developing programs to enhance student self-awareness. The data often portrayed humanistic approaches to teaching and research as stale and passe innovations that historically have been unsuccessful. Legal educators who do not subscribe to psychological and humanistic theories may be left wanting a coherent framework for structuring course content and teaching methods.

All sources agreed that law students experience significant personal anxiety and conflict about their education and professional roles, and that law schools have a responsibility to help students address, understand, and cope with such tensions. Despite such widespread concern, the problems of student anxiety, specifically concerning ethical conflicts, are not significantly researched nor discussed within the legal education community. Many educators who devote serious scholarly attention or who openly address ethical self-identity concerns in their classrooms suffer the same anxieties and diminished status as do faculty involved in non-traditional teaching and research.

(6a) *Sequence Legal Ethics Instruction in First Year or Early in the Law School Curriculum.* The sequencing of legal ethics instruction in the first or second year of the law school curriculum was cited more frequently as an important change in the original interviews than in the other data sources. Discussion of the force field was concerned with issues of student preparation and socialization, including both cognitive and attitudinal dimensions. Forces relating to the symbolic significance of sequencing, competition from other first year courses, and other possible early sequencing models were also considered.

The data presented rationales which both support and oppose early sequencing. One interviewee assessed the advantages and disadvantages of offering legal ethics instruction to first and second-year law students:

[Early sequencing] has a disadvantage. The disadvantage is that the students' legal knowledge and experience is very slight. On that dimension they are too docile; they take everything the teacher says as an accurate description of what being a lawyer is like. The advantage of teaching upperclass students is they have a sense of what being a lawyer is like. So there is a disadvantage. I don't know which way I would vote on that.

Other commentators were unequivocal about the value and feasibility of first and second-year instruction in legal ethics. A justifying assumption is that first-year students are more psychologically impressionable about their roles as law students and future professionals. It was strongly advocated that law schools should view early instruction in ethics as an opportunity to begin the process of socialization into the profession's traditions. Offering instruction early in the curriculum is viewed as provid-

ing students an opportunity to consider career options before they are socialized into conservative and traditional vocational tracks:

Students buy into the conservative, traditional mode—clerkship to large corporate law firm. They have already “hired in” by the time they think about these things. It is very upsetting. It would be better if students had it [instruction in ethics] earlier.

Late sequencing, on the other hand, may provoke resistance on the part of students; by their third year, they typically have embarked upon such a conservative employment track which they may be reluctant to examine critically and challenge from an ethical perspective.

Ethics instruction scheduled early in the curriculum is claimed to provide valuable perspective for subsequent courses. Moreover, failure to give the course priority sequencing may send students a message that the course is unimportant and not to be taken seriously. Frequent citation of this assumption suggests that it is a strong force. Finally, competition from other courses was indicated as a strong pressure resisting the proposed change.

Presented was evidence of other innovative first year programming in areas such as legal writing, appellate advocacy, and models of early sequencing of ethics instruction at some law schools. Such experimentation, if successful, may eventually encourage a first year curriculum with greater flexibility than currently is the case. The data did not agree about whether or not students are better served by instruction earlier in their education when they are psychologically more receptive, rather than later when they have more formal training. Early sequencing may impress upon students that legal ethics instruction is integral to their educational and professional development. However, whether early sequencing is appropriate may depend on trends in the development of the subject matter. If content evolves, for example, in the direction of greater emphasis on moral philosophy, then preparation requirements may change to give weight to a particular chronology of law school training.

(6b) *Infusion of Ethics into the Entire Law School Curriculum.* One reason advanced for a more comprehensive exploration of legal ethics is the need to enlarge student understanding of the relevance of ethics to the entire law school curriculum. For example:

The contrast is interesting between medicine and law, because I believe you can teach someone to be a quite good doctor, and there will be nothing of an ethical nature in the technique of being a good doctor. I think the way doctors tend to regard people, you can become a very good technical doctor and surgeon that never really has to relate to a patient. You can be a superb physician, as a doctor in your expertise—I am not talking about the relationship to the patient, of course which is ethical. . . . In law [every] subject you are discussing always involves questions of right, duty, underlying

norms. . . . Therefore, for the actual structure of teaching law, we have in it this lurking ethical dimension, which I think is very distinguishing of the profession. I don't think there is any profession as powerful as lawyers are in America, where you have the implicitly ethical dimension in the subject. Therefore, my own view is if you start putting it in the substantive subject, you are a better teacher, and you also do your job better because students become more ethically sensitive.

Those who advocate the change are aware of potential weaknesses. A primary problem lies in the alleged lack of faculty competence to guide instruction of this scope. Traditional curricula and teaching methods are well-defined compared to the abstruse and comprehensive approaches implied in this proposal. Observers indicated that students need curricular definition and structure, particularly in their new encounters with the law, and that this need for clearly framed subject matter may argue against the feasibility of the suggested change:

When you are studying law it is difficult simply to understand what the rules are and what the analysis is. It is simply difficult. And there is a natural tendency in students to want to understand the difficulty, and a natural tendency among teachers to respond to that difficulty, natural among teachers, first of all, because the students want it, and secondly, because it has stood for the traditional measure of academic quality. That is what a good law review article did. That is what a good teacher should be able to do in the classroom. It is very hard to incorporate a broader notion of professional responsibility without running up against that.

That few influences were identified which relate to the proposal may suggest it is not well thought out. The lack of forces also may indicate that the suggested change is not viewed as moving toward implementation or a close enough reality to be feasible.

(7a) *Challenge to the Ethical Assumptions Underlying Legal Education by the Legal Ethics Curriculum.* The proposal to criticize the ethical assumptions of the law school curriculum was cited only in the interviews. The literature on ethics instruction did not discuss forces relevant to this suggested change. Only the general literature on legal education provided observations about factors that might be interpreted as potentially influencing this proposal. The interviews and transcripts identified but a few influences relevant to this reform. The characteristics of this change were not clearly defined. Interviewees primarily discussed the inadequacies of the current legal system rather than the form of change, although classroom discussion and increasing cooperation between faculty and students were stressed as a means of exposing and addressing hidden ethical assumptions.

One proponent believes that implicit ethical assumptions govern the adversarial way in which people legally regard each other and resolve ethical disputes. Others maintain that at the root of law is a moral/political

ideology that promotes a hierarchical socio-economic class structure and inequities which are contrary to the fair distribution of justice. According to this outlook, the law school curriculum, including substantive content, analysis procedures, and advocacy techniques undermine the legal system's capacity to provide a just society.

A defender of this proposal argued that the implicit ethic of the curriculum is found in the hierarchy of courses, particularly the higher status assigned those supposedly representing right-wing, conservative, and upper and middle-class ideology:

The curriculum as a whole has a rather similar structure. It is not really a random assortment of tubs on their own bottoms, a forest of tubs. First, there are contracts, torts, property, criminal law and civil procedure. The rules in these courses are the ground-rules of late nineteenth century laissez-faire capitalism. Teachers teach them as though they had an inner logic, as an exercise in legal reasoning with policy [e.g., promissory estoppel in the contracts course] playing a relatively minor role.

Then there are second- and third-year courses that expound the moderate reformist programs of the New Deal and the administrative structure of the modern regulatory state [with passing reference to the racial egalitarianism of the Warren Court]. These courses are more policy oriented than first-year courses, and also much more ad hoc. Teachers teach students that limited interference with the market makes sense, and is as authoritatively grounded in statutes as the ground rules of laissez faire are grounded in natural law. But each problem is discrete, enormously complicated, and understood in a way that guarantees the practical impotence of the reform program

This whole body of implicit messages is nonsense. Legal reasoning is not distinct, *as a method for reaching correct results*, from ethical and political discourse in general⁵⁸

Although not representing a particular political ideology, basic doctrinal analysis taught in law school is portrayed, although infrequently, as amoral in its very pretense of rationalism and value-neutrality. That certain pedagogy, particularly the case method of instruction, represents a hierarchical structure based upon control and manipulation of students was the posture of at least two discussants.

Explanations of legal procedure were portrayed as carrying moral significance, yet one pupil suggested that students are critically unprepared to decipher the hidden ethical message:

I think that procedure was adopted with the implicit notion that the underlying substance was the current view, and that students were encouraged to

⁵⁸ D. KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* 19-20 (1983).

adopt that view. And I don't think they are much allowed to disagree with that.⁵⁷

Training in adversarial techniques also was criticized as implanting in students a distinctive moral world view that places high value on aggression, competition, and materialism over compassion, sympathy, or conciliation. A contrasting view suggests that there is no particular value transmitted in the curriculum, or that where the value-dimension is found, it is already addressed. Basically, this position holds that it is not worthwhile to attempt to expose any implicit ethic:

This opening up of certain kinds of debates about values in law schools wouldn't make a hell of a lot of difference.⁵⁸

The futility of a classroom struggle with these issues, given the lack of agreement over which ethical values and applications to honor, was expressed thusly:

I don't think for a minute that law professors of all kinds and politicians of all kinds don't think about, don't articulate, don't have views on these things, I think they do. It's just that if the question then is, well, who is going to have the right to declare which values will be operative in society, everybody agrees that they don't have a way of fixing on one or another, and so they simply say, well, now we will have this kind of free-for-all. So, obviously, then the question is, is that a good thing to do under those circumstances? But I think it is misleading to picture this as a lack of thought or discussion of substantive issues of the good. It's a strategy when agreement is not generally able to be reached.⁵⁹

Also indicated was concern for values underlying the hierarchical law school reward system. The incentives noted earlier in this discussion of prestige and financial achievements that mark students as successful are not premiums that would direct them toward serving the most needy; instead, rewards push students toward vocations that serve the upper and middle classes. As one legal educator recalled:

By the end of the first year the reward structures have been solidified. There are some who have been selected for law review, and others who have been labeled to have failed. They failed as great and good legal scholars because that is the way the school presents it. But they don't have to fail to be great lawyers, so they become much more prone to the hierarchies of big firms, proving that they are still the best and very good, until they get caught up in the second year with enormous focus on the job. My own in-

⁵⁷ Colloquium on Undergraduate and Legal Education 135 (1984) (unpublished draft of proceedings, Georgetown University Law Center).

⁵⁸ *Id.*

⁵⁹ *Id.* at 126.

stinct is that the most destructive thing in the profession is the hierarchy of law schools.

The legal education hierarchy, Kennedy argues, in turn is transposed into a professional hierarchy:

I have been arguing that legal education causes legal hierarchy. Legal education supports it by analogy, provides it a general legitimating ideology by justifying the rules that underlie it, and provides a particular ideology by mystifying legal reasoning. Legal education structures the pool of prospective lawyers so that their hierarchical organization seems inevitable⁶⁰

Most law jobs, and almost all the jobs at the top of the hierarchy, consist of providing marginally important services to businesses in their dealings among themselves and with consumers and stray victims. Of the remaining jobs the great majority involve trying to get money out of the business community in the form of compensation for injuries to individuals, or of arranging the private affairs of middle class or upper class people. The total number of jobs that directly serve the public interest is small, and the number of jobs that integrate law and left political action is tiny.⁶¹

A strong support for this proposal is the growing faculty and student interest in the distribution of legal services. One legal educator indicated that instruction focusing on the delivery system will likely challenge the degree to which current practice and legal education promote basic cultural values of justice and fairness. A powerful driving ingredient may be the intense degree of dissatisfaction on the part of some faculty with current traditional legal education, the legal system, and the profession as suggested earlier. Faculty disillusionment with teaching, particularly evident in the interviews, may have precipitated attention to the ethical premises of legal education.

Relevant to this discussion are contradictory assumptions about whether or not law schools affect moral conduct. Many individuals arguing to challenge the underlying ethics assume that tacit ethics alter values, especially political attitudes toward the economy and toward the law. However, there is also general agreement that formal, explicit instruction has no bearing on moral conduct. No explanation is offered as to why moral behavior is affected by implicit, as opposed to explicit education. Also significant is the interrelatedness of this change to others here cited. Progress toward the development of an *institutional ethical commitment and agenda for action* may be sabotaged by the move to *challenge the tacit ethic of law and legal education*, particularly if the ethic is exposed as illegitimate. The very core of law necessary to professionalism and community formation may be undermined.

⁶⁰ D. KENNEDY, *supra* note 57, at 71.

⁶¹ *Id.* at 34.

(7b) *Increased Practice Experience for Faculty.* The need for faculty to have practical experience as preparation for teaching legal ethics was suggested in the interviews; however, only one reference was made in the transcripts. The suggestion that practitioners teach as adjunct faculty or guest lecturers was not included in this count. Most references to this reform were incidental to other discussion, thereby suggesting that it is not as important as most proposals.

The most frequently offered reason for increasing faculty practice experience is that it provides first-hand experience with the actual ethical problems students will face in real life:

Too many [legal ethics] courses are given in too few hours and taught by too many faculty members who lack both dedication and practical experience.⁶²

No opposing reasons were indicated, other than to underline the dangers of overemphasizing practice. Only a few discussants suggested faculty aversion to practice and incompatible intellectual and scholarly orientation.

The need for increased familiarity with law practice is a common and perennial problem identified in almost all areas of teaching. The concern that faculty have first-hand knowledge of the practical problems and issues they present in the classroom likewise is not unique to legal ethics instruction. The criticism that instructors are ill-equipped because they lack experience in actual vocational settings also is pervasive to other branches of professional education.

VI. SUMMARY AND IMPLICATIONS

One of the most significant reforms in legal education within the last ten years is the implementation of ethics instruction at most law schools. Yet a significant body of literature suggests that legal ethics education is failing. The discussants represented in this study consistently argued that change in legal ethics instruction is needed; the experts did not agree, however, upon the form that change should take.

This study found numerous forces that may be considered *generic* or common to most or all frequently cited changes. On balance, the number of influences classified as generic to change in legal ethics instruction exceed the number uniquely presented for each change. Generic forces were identified by all data sources and for all categories of the force field, including students, faculty, law school, profession, and other. Because factors influencing legal ethics instruction are highly generic, any specific reform will be impacted by pressures common to other innovative endeavors. Due to their pervasiveness, generic elements may carry greater

⁶² Burger, *supra* note 1, at 392.

cumulative weight than specific forces in determining the progress and direction and change in legal ethics instruction.

The presence of significant generic factors suggests that it is difficult to separate consideration of reform in the legal ethics curriculum from general reform in legal education. Many of the forces identified, particularly those regarded as generic, may be viewed as relevant to other change efforts in legal education. For example, any proposal that abridges many long-held norms here identified, or that may be perceived as representing outside influences, will likely be resisted.

This study also concludes that planned change in legal ethics is either unlikely or difficult. This is based on the lack of theoretical coherence and interrelatedness of assumptions about the knowledge base, purpose of instruction, pedagogy, and known characteristics of students and faculty. Faculty strongly disagree about the nature and dynamics of professional or ethical responsibility, the validity and moral content of the codified standards, the process of moral inquiry, the current level of moral conduct about the legal profession, where and how ethics should enter or should penetrate the curriculum, what the purpose of instruction should be, the current level of moral conduct of the legal profession, and the relationship of law to morality. Significant theoretical disagreement exists about what the curriculum content and instructional methodology should be.

This study also concludes that change in legal ethics will be difficult due to the magnitude of generic retraining forces. Law schools were depicted as conservative and tradition-bound institutions that are, as a rule, inhospitable to change. The interrelatedness or systemic quality of many inhibitors enhance their strength. For example, the interlocking of conservative, prestigious educational institutions is cited as a strong obstacle to law school reform. This elite network controls other change variables including faculty appointment and promotion standards, student hiring and clerkship patterns, accreditation requirements, undergraduate instruction, and counsel by pre-law advisors.

Commentators mostly represented student attitudes as powerful barriers to change. Students assign low status to legal ethics courses because instruction does not conform to what they believe is legitimate legal education. Students also were portrayed as questioning subject matter based upon the *Model Code* or *Model Rules* and as having little interest in instruction that is not closely tied to their current situations or projected work experiences. Faculty and student norms were regarded as significantly incompatible.

The weak peer stature of some clinical and other faculty whose programs feature ethics may be an added barrier. Status issues largely differentiate the perceived legitimacy of practical or theoretical approaches; clinical instruction is depicted as occupying lesser status than the doctri-

nally oriented curricula. Still, law schools were repeatedly depicted as modeling law practice values. The practicing profession allegedly defines success by monetary gain. Law school achievement, in turn, is determined by the extent which it produces prospective lawyers who satisfy the standard of professional status. The contest between professional norms stressing technical competency and the law school's emphasis on theory is evidence of the long-standing dichotomy between practical and theoretical approaches to legal education.

Professional norms were characterized that discourage active self-policing. Several commentators argued that law school and law practice norms are antithetical to ethical sensitivity. The high value assigned moral relativism, instrumentalism, positivism, rationalism, competitiveness, and advocacy were depicted as contradictory to emphatic and conciliatory truth-seeking competencies.

The possible presence of a hierarchy within legal education, the legal profession, and legal system makes pluralistic change particularly problematic. According to Hage and Aiken,⁶³ the more pronounced the stratification, the lower the rate of organizational change. Extreme differentiation encourages subgroup solidification; multiple bases of powerful political units may compete with each other for rewards.

Incentive systems may be barriers to the implementation of several identified changes. Some interview participants believed that students enroll in law school to acquire skills that can open doors to high economic strata, power, and status within the legal, business, political, and social spheres. Faculty, on the other hand, were portrayed as less preoccupied with financial remuneration than students or law practitioners. Instead, their incentives are tied to prestige issues, such as association with elite intellectual communities. Hence, in order for change to occur, the rewards at several levels of the legal education and law profession must be altered.

Idealized traditions or apparent rituals of the legal education culture, where identified, were recognized as embodying significant resisting power and hindering tolerance for a variety of problem-solving approaches. One respondent called the "mystique of legal reasoning" sacred. Students were particularly regarded as caught up in the mythical impression that traditional legal analysis, notably the consideration of court decisions through defined deductive reasoning and criticism techniques, are the sum total of legal education. The student's phantasmic image of the adversarial system is also cited, a romanticism that may seem to justify unethical conduct. The veneration of the Socratic method of classroom discussion and, indeed, the tenacity of this pedagogical technique may indicate that instructional routine carries more weight in legal education

⁶³ Cited in A. LEVINE, *WHY INNOVATION FAILS* (1980).

than other elements of the curriculum, including the course content.

All data sources indicated high faculty and student anxiety, or at least significant ambivalence, about the law school's advance into the realm of ethics. However, an interesting dichotomy is what appears to be some faculty readiness to explore the tacit ethic of legal education. While some instructors argued that legal education does not affect moral conduct, many who advocated *challenging the school's hidden ethic* claimed that implicit values underlie subject matter, teaching methods, or administrative structures and affect students' ethics. Many of these same educators are unwilling to undertake explicit ethics instruction, declaring that formal course work has no bearing on moral conduct.

Resistance to external pressures is a significant and constant theme throughout all discussion of change. "Outside" factors were considered not only as impulses external to the law school environment but also external to individual subgroups. That is, in certain contexts, law students view faculty as outsiders; faculty view law school administrators as outsiders; and traditional faculty regard change-oriented faculty as marginal members of the law school community. Additionally, legal ethics instruction in its present form is still significantly regarded as an "outsider" because it is unlike traditional curricula. While some attitude change is evident, it continues to engender some xenophobic reaction. If it had been the product of internal initiatives instead of outside impetus, perhaps the response would have been more friendly. The concern of the teaching profession for possible encroachment by practitioners is an example of one element of the legal education culture threatening another. Resistance to non-legal subject matter is viewed as a major obstacle to implementing several suggested changes, including proposals that would *increase content emphasis on interdisciplinary perspectives, moral philosophy, literature*, or that would enhance student self-identity.⁶⁴

A potentially powerful new variable in legal ethics instruction is the infusion of women into the professional and law school environment. Women were characterized as more concerned than men are about ethical dilemmas and as giving greater weight to the dynamics of interpersonal

⁶⁴ The basic theoretical framework for this discussion of restraining forces is Goodwin Watson's model of resistance to planned change. See Watson, *Resistance to Change*, in *THE PLANNING OF CHANGE* (2d ed. 1969). Watson identifies five impediments to change within social systems including conformity to norms, systemic and cultural coherence, vested interest, the sacrosanct, and rejection of outsiders. *Id.* Lon Hefferlin's description of barriers to change in academic institutions also is suggestive of many of the findings of this study. Particularly in keeping with the analyses of restraining forces are his characterizations of educational institutions as inherently passive; tending toward institutionalization and ritualizations; vertically and hierarchically fragmented into units of students, faculty, and administrators; and lacking rewards for innovation. See J.B. LON HEFFERLIN, *DYNAMICS OF ACADEMIC REFORM* (1969).

relationships, solidaristic activity, and conciliatory strategies.

The increased concern by faculty for the legal distribution system was described as a strong influence on the future course of the curriculum. The new attention toward addressing the legal needs of the diverse economic, social, and ethnic populations likely will impact future instruction and research.

The increasing emphasis on black letter standards of law and away from attention to ethical principles is portrayed by some observers as destructive to a full understanding of the moral complexities of law practice and the legal system. Accordingly, the growing body of court decisions, bar opinions, and malpractice litigation may compete for coverage in the legal ethics curriculum at the expense of other relevant perspectives, such as moral philosophy.

Zaltman, Florio and Sikorski observed that most educational changes are externally precipitated.⁶⁵ Indeed, forces external to the law school, as opposed to internal forces, may be responsible for the current emphasis on legal ethics instruction and the sustenance of interest into the near future. The ABA mandate that law schools provide instruction in professional responsibility or ethics was indicated across all data sources as the primary incentive to past and present reform. Other forces portrayed as contributing to continued attention include the current social and cultural interest in moral values, growing numbers of lawyers that will result in greater competitive tactics, increasing litigation around ethical issues and, thus, an expanding body of law, and mounting support within the university community. This study suggests that there will soon be a sustained, current interest in ethics instruction because influences external to the immediate change environment will continue to promote involvement. Yet, active internal forces also will continue to elevate interest: the widespread teaching of ethics, improvement in the quality and quantity of teaching materials, and increased active participation by respected and elite scholars. The interviewees portrayed faculty as increasingly supportive and, to a lesser degree, students see the curriculum as rising in legitimacy and status. The influx of female students and faculty into legal education also may be a significant factor in the apparent increasing support.

The intense dissatisfaction on the part of some faculty with traditional legal education may also be a major ingredient in reform efforts, both within legal ethics instruction and legal education. Particularly evident in the personal interviews was a sense of some legal educators distancing themselves from their profession, a factor that may qualify reform requiring collective attention and advocacy.

⁶⁵ G. ZALTMAN, D.H. FLORIO & L.A. SIKORSKI, *DYNAMIC EDUCATIONAL CHANGE: MODELS, STRATEGIES, TACTICS AND MANAGEMENT* (1977).

Because the ideas of Lewin and other change theorists are relevant to issues of change in legal ethics instruction, a possible value of this work is that it may help to round out the literature on legal ethics instruction. According to the definitions of *planned* and *unplanned change*, the widespread institutionalization of current legal ethics instruction more realistically might be the product of unplanned change. Even the ABA requirement may not be considered a planned change strategy because it did not entail deliberate inquiry, strategy development, and implementation processes. Sustained interest in ethics instruction does not guarantee planned change strategies will be used to improve the curriculum, although continued attention may encourage an organic or unplanned process of increased discussion, scholarly activity, experimentation, and reformularization of norms.

VII. RECOMMENDATIONS

This study does not advocate specific reforms or the implementation of certain strategies. Nevertheless, these findings and conclusions suggest possible courses for research and action that may strengthen attempts to improve legal ethics instruction. Future study should develop coherent theories that define the premises of the knowledge base, pedagogy, and purpose of instruction. Descriptive and analytical studies should examine the characteristics and usefulness of current theory and practices in achieving instructional objectives. Inquiries about the knowledge base should address the nature of professional or ethical responsibility, the relevant processes of moral inquiry, the past and present ethical conduct of the legal profession, the relationship of concepts of ethics to formal standards of professional responsibility, and the role of law in exemplifying the moral worth of society. The use of moral philosophy to address assumptions about the knowledge base should be encouraged because it embodies significant coherent theory that may lend underlying logic and doctrinal order.

Pedagogical problems that should be addressed include the potential direct or indirect effect of law school socialization, the work environment, and the curriculum on students' moral disposition. The means by which ethics penetrates the formal or informal curriculum also should be investigated. Research and scholarship should consider areas of controversy or agreement in legal educators', law students', and practitioners' views about the purpose of instruction. Instructional objectives for specific curricula should be based upon clearly formulated assumptions about the knowledge base, pedagogy, and faculty and student competencies and characteristics. Proposals for course content and teaching methods should grow out of these factors.

Future studies should identify and analyze generic forces that might

influence the legal education change environment. Because generic forces are likely to play a significant role in determining the outcome of any reform efforts, they should be seriously considered by change agents; those who seek change should develop strategies that weaken generic resisting forces.

Professional ethics instruction in non-law school environments also may provide important insights about change proposals and influencing factors. For example, legal ethics and bio-ethics education, although having much in common, are infrequently compared. Forthcoming research and scholarship should compare important features of legal ethics and other law school curricula. A cross analysis of all instruction may identify possible compatibilities or contradiction between legal ethics and other curricula that should be strengthened or weakened if legal ethics instruction is to be improved.

Sabbatical opportunities and other incentives for faculty development should encourage greater primary and secondary specialization in legal ethics. An apparent major hindrance to strengthening instruction is the lack of faculty expertise. This study found that few individuals are engaged in extensive scholarship in the field; most faculty indicated that ethics is not their primary area of teaching and research but, more typically, one of several. If some measure of theoretical coherence is to be achieved, and any sense of doctrinal systemization brought to the discipline, scholars need to devote concerted attention to the field.

Legal educators should refine subject matter for the legal ethics curriculum. In particular, they should experiment divesting it of overly diverse content. Presently, it attempts to cover a great deal of unrelated subject matter that potentially dilutes its effectiveness. This highly dissimilar content may be premised upon differing or mutually conflicting assumptions, purposes, and pedagogical techniques. Clinical programs should not shoulder the entire burden of legal ethics instruction. Educators should recognize the practice orientation of students and use vocation based teaching where possible. Still, the content of most clinical programs is significantly expansive, even without legal ethics. Because of competing priorities within the clinical setting and associated course work, significant additional time, possibly a separate course, should be provided to insure thorough analysis and reflection of ethical problems and issues.

Administrators should signify to students and faculty the value of legal ethics instruction. This study indicates that administrative action is emblematic of the importance of legal ethics relative to other course offerings. Particularly, early sequencing, credit designations comparable to other courses, non-requirement status, and instruction by high status faculty may send students the message that the course is important. Finally, faculty who teach legal ethics should be more honest with students

about what they are attempting to do in the classroom and the limitations of the course. Instructors should advise and inform students on areas of theoretical chaos and disagreement among legal educators with respect to appropriate course objectives, subject matter, and presentation methods.

VIII. REFLECTIONS

Being or becoming a lawyer can lead to a condition of moral submergence. The inevitable routine and protocol, the counterpoint of competition, the recurrent externalization of a subjective dimensionality squeezes lawyers' eyes shut so they miss the turning and counterturning of human immediacy. Daily law practice, law study, and law teaching are quilted with naggings that quiet the consciousness to its cogency of a maker of morality. Such distractions close off inclinations to look truthfully for ways to resist the press of power, avarice, or isolation. Stifled ethical agency folds in the distances of ideas, feelings and deeds that attach to all sides of being human; it arrests the liberty to browse among one's meditations, to turn a thought around here, then there, taking in one perspective now, and soon another.

Recently there has been much discussion concerning the topic of lawyer ethics. This study is a part of the parley. To be honest, reporting conversations in empirical tones is to pave over human premises with a flat glaze and to empty the interviews of much of their life meaning, like slamming a wooden gate on a lush garden. Yet perhaps a few readers will sense what I did sometimes in only voice inflection or in a gesture of leaning into a discussion; a resolve to make professional life more meaningful and to find simple shapes that reduce the chaos in the world of law.

