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Bridging the Gap: Legal Education and Lawyer Competency

E. Gordon Gee

Donald W. Jackson

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Bridging the Gap: Legal Education and Lawyer Competency†

E. Gordon Gee and Donald W. Jackson***

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Our interest concerning problems in legal education was kindled while we were serving as Judicial Fellows at the United States Supreme Court. For that spark we wish to thank Chief Justice Warren E. Burger and Dr. Mark W. Cannon, Administrative Assistant to the Chief Justice. Their concerns for improvements in the justice system gave rise to our desire to study legal education as one of the most essential components of that system.

We also wish to thank Messrs. Joseph Cannon and Michael L. Jensen, students at the J. Reuben Clark Law School, who as our research assistants have made major contributions to this study. Mr. Jensen has also assumed overall editorial responsibility for the study as an Article Editor of the *Brigham Young University Law Review*, doing so in the most professional manner.

Finally, we recognize our silent and most important partners in this project: the deans, faculties, and students of America's law schools.

* Associate Dean and Associate Professor of Law, J. Reuben Clark Law School, Brigham Young University. B.A., 1968, University of Utah; J.D., 1971, Columbia University; Ed.D., 1972, Teachers College, Columbia University.

** Chairman and Associate Professor, Department of Political Science, Texas Christian University. B.A., 1959, J.D., 1962, Southern Methodist University; Ph.D., 1972, University of Wisconsin.

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SECTION I

INTRODUCTION

A. *Origins and Purposes*

This Article represents a modest effort at an immodest task: we attempt a critical examination of American legal education. In the course of this examination we raise some current issues and review certain historical antecedents as they illuminate those issues. Further, we seek to evaluate the processes and prospects for stability or change in American legal education. To put it in capsulized form, we ask:

1. What are the notable issues in American legal education?
2. What perspectives do the history of legal education and bar admission in the United States, the experience of England, and the experiences of other professions offer on current issues in American legal education?
3. What appear to be the significant trends in American legal education?
4. What are the dynamics—the interplay of forces and factors—that determine change or stability in American legal education?

Essays on legal education that speak of crises, turning points, and innovations are legion. Often these discussions lack historical perspective, appearing to mistake the current for the novel; just as often they are myopic, lacking the broader view that recognizes certain changes as inevitable. Primarily, critiques of legal education revitalize the trite aphorism that “there is nothing new under the sun.” Writing still another programmatic essay about the “malaise” in contemporary American legal education or presenting *our* vision of what legal education should be and *our* version of its curriculum would merely add unbleached bones to the crowded graveyard of such proposals. We eschew both Cassandra and Don Quixote; forecasting doom or jousting with windmills may be cathartic, but neither is very useful.

We seek to avoid the pitfalls reproached above and expect to be judged severely by that standard. We offer as the saving graces of this study our *perspective and purpose*.

Although we both have law degrees and have practiced law, one briefly and the other for five years, we each have terminal degrees in other disciplines. One received his degree in education and has only recently come to legal instruction and administra-

tion; the other is a political scientist who currently teaches in that field. Relative to the legal education establishment, the practicing bar, and sitting judges we write as outsiders. This perspective helped us to recognize and gauge the implicit assumptions under which legal educators often labor. Because we have no long-term vested stake in legal educational traditions or practices, we were quite willing to start our evaluation with a clean slate. Thus, we hope that our outsiders' perspective has allowed us to question premises, traditions, and practices that might otherwise be overlooked or thought sacrosanct.

In order to evaluate our present purposes, the reader must know more about our previous studies. Our work is the outgrowth of a year that we spent as Judicial Fellows at the United States Supreme Court. In addition to our respective responsibilities at the Court, we were blessed with sufficient time and a fertile environment in which to study and reflect on a number of subjects, including legal education. One stimulus for our reflection was the Sonnett Lecture delivered by Chief Justice Burger in 1973.¹ The Chief Justice voiced the discontent of many observers of our judicial system concerning the education of lawyers, most notably the occasional ineptitude apparent in the oral advocacy of counsel and the perceived inadequate conformity to professional ethical standards. That lecture served to focus our attention on a subject that had long commanded our interest.²

Interest matured into active study of the legal educational process. Our first collaboration resulted in the publication of a monograph in which we tabulated listings of required courses in the 1974-1975 catalogs of 126 American law schools.³ Our work was a simple, straightforward reporting of what we found, prefaced by a short historical review of law school curricula and summarized by a brief analysis of our tabulations. We attempted to present our data on required courses in a form that would be

1. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973) (4th Annual John F. Sonnett Memorial Lecture).

2. This is not to say that we always agree with the Chief Justice, either in his assessment of the problems or in his recommendations, but we do applaud his insight and courage in calling attention to sensitive issues. His public statements go far beyond the "Majesty of the Law" rhetoric that is so often characteristic of public occasions like Law Day U.S.A. addresses.

3. E. GEE & D. JACKSON, *FOLLOWING THE LEADER?: THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA* (1975). William Pincus of the Council on Legal Education for Professional Responsibility (CLEPR) should be credited with suggesting the subject of this monograph as well as that of our second monograph, cited below.

readily usable by those involved in making legal educational policy. Although the study did little more than confirm the conclusions of informed observers regarding the uniformity among required law school courses, the confirmation was based on the systematic examination of available information rather than on individual impression or surmise.

Our first study led proximately to a second.⁴ Having examined required courses, we concluded that the same process could be adapted to the tabulation of elective courses, although that involved some inherent difficulties. The variety of electives contrasts sharply with the uniformity characteristic of required courses; the titles and subject matter of elective courses are myriad. Thus, we had to conceive of a classification scheme into which we could sort elective courses. Once the scheme was developed, it was possible to tabulate by category the frequency of elective course catalog listings.

The simple reporting of such tabulations, however, would have left much unanswered. For example, of all the courses listed in law school catalogs, how many were actually offered during the course of a year? The notion of election itself raised the question of how students in fact utilized their electives. Thus, our second study reported three sets of data for the academic year 1974-1975: the courses listed in catalogs as electives, the electives actually offered, and the courses actually chosen by students. We reasoned that the listing and offering of elective courses by law schools represented a rough indicator of the educational priorities of law schools and that the use of elective hours by students provided a rough estimate of student priorities. As with the first study, we intended merely to report what we found, hoping that the information would serve the purpose of enlightening discussion about the condition of American legal education.

With the publication of our two monographs we had exhausted the data that could be mined from a systematic review of law school catalogs, yet we had only touched on a more important line of inquiry. For example, although we perceived from our second study that student electives were often exercised in favor of subjects that students would ultimately confront on bar examinations, that conclusion was only a plausible inference drawn from aggregate enrollment data. We wanted to explore in greater depth the roles, traditions, norms, incentives, and sanctions that

4. D. JACKSON & E. GEE, *BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975).

are material in faculty, administrative, and student decisionmaking. The tabulations in our first two studies were indicative of decisions that had been made, but they shed little light on the dynamics of decisionmaking. Regardless of whether the best of all possible worlds for legal education is thought to be the preservation of the status quo, radical change, or some form of incremental evolution, a better understanding of decisionmaking dynamics would facilitate more sensitive and sensible work in legal educational policymaking. We direct the present study toward enhancing that understanding.

B. Methodology

A brief word about our methodology is appropriate at the beginning of this Article. During the academic year 1975-1976 we visited ten American law schools.⁵ At one school, visited regularly during the fall semester of 1975, one of the authors sat in on classes, met informally with students and faculty, attended a few faculty meetings, and attempted to get a general sense of a typical legal educational program. Visits to that school provided the background for constructing a law student questionnaire based upon those used by others⁶ and for developing a law faculty questionnaire. The other nine schools were visited, with one exception, by both authors. These visits, consisting of one or two days at each school, involved interviews with students and faculty, followed by questionnaires mailed to the faculty and a selection of students at eight schools.⁷ We relied on the questionnaires only as a limited check on the reliability of the impressions we derived from our visits and live interviews.

5. The identity of these schools will not be disclosed in order to ensure the anonymity of our interview subjects. The schools were selected to represent different parts of the country and to reflect a variety of approaches to legal education. For the details of school selection, see Section VII, note 6 *infra*.

6. Our questionnaire was derived and modified from the Law Student Inquiry (LSI) constructed by Felice J. Levine and James M. Hedegard in 1974 for use in the American Bar Foundation (ABF) research program in legal education. In addition to new questions, the LSI itself is in part an adaptation of a questionnaire employed by Robert Stevens in *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973), in part a modification of questions employed by Howard S. Erlanger and Douglas A. Klegon in their ABF-sponsored study on the *Socialization Effects of Professional School* (an unpublished, undated manuscript reviewed in Section VII, notes 53, 88-96 and accompanying text *infra*), and in part a replication of questions taken from the questionnaire employed by Barbara A. Curran in the ABF-sponsored study, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* (1977). The faculty and student questionnaires can be found in Appendixes A & B *infra*.

7. The details of questionnaire administration and response rates are reviewed in Section VII, note 6 *infra*.

Upon completion of our visits to American law schools, we spent one week in England interviewing responsible legal educators and administrators at the Law Society and the Senate of the Inns of Court. In addition, we attended several relevant conferences sponsored by the American Bar Association (ABA)⁸ and the annual meeting of the Association of American Law Schools (AALS). We also selectively interviewed a number of people who are involved either in research on legal education or in debates and decisionmaking regarding legal educational policy.⁹

In summary, we spent a year in this country and a brief time in England informing ourselves and learning the opinions of others about legal education. Much of our work is obviously impressionistic, but deliberately so. Some social scientists in their more rigorous moments might perjoratively call our work journalistic. It is doubtful, however, that the kind of educational policy issues we examine would presently admit to much more rigorous inquiry; this is certainly true absent much greater time and resources than we had at our command. We trust, however, that our work is as objective as good intention can make it, and that any biases or omissions will be duly criticized.

C. *Outline and Cautionary Notes*

Here, then, is the outline for the balance of the Article:

Section II identifies some of the contemporary, salient issues in the professional training of American lawyers.

Section III is a historical overview of legal education and bar admission requirements in the United States.

Section IV is a brief comparison of legal education and admission processes in England with those in the United States.

Section V is a brief exposition of what can be gleaned from viewing other professional educational models in the United States.

Section VI reviews some of the discernible trends and developments in the professional training of American lawyers.

Section VII is both an analysis built on the Sections above

8. These ABA conferences focused on lawyer competency and continuing legal education. See, e.g., AMERICAN BAR ASSOCIATION, QUALITY LEGAL SERVICES AND CONTINUING LEGAL EDUCATION (1976) (report of the 1975 National Conference on Continuing Legal Education).

9. Our interviews included selected legal educators, judges, and lawyers. Primarily they were individuals who had recently played some notable role in legal education or bar admission issues, or who were in a position to comment on recent developments in their states.

and a review of the impressions we derived from our interviews and questionnaires.

Section VIII is our effort to extrapolate certain trends and tendencies, make some tentative inferences, and present some projections (or speculations) about the future of American legal education, particularly clinical legal education. We offer suggestions and admonitions, not so much about the structure, content, or process of legal education as about the factors that are likely to affect efforts either to preserve the status quo or to produce educational change.

Since this Article is a rather brief effort to contribute perspective to issues relating to the proper future of American legal education, we want to carefully disclaim other possible purposes and designs.

Although *Section III* is primarily historical, we do not present ourselves as expert legal historians or our work as a comprehensive history. Others have legitimate claims to that expertise, and their work should be consulted for more extensive treatment.¹⁰ We intend only to provide sufficient historical background for perspective on the current legal educational issues discussed in the Article.

Section IV broadly compares English and American legal education, but we are not experts on the English system and do not intend an intensive comparative work. Our purpose is to look briefly at the experience of legal educators in England as it may shed light on issues in American legal education.¹¹

In *Section V* we look at the practices and experiences of other systems of professional education. We clearly are not experts on the educational models of those professions, however, and look to them only to see whether their experience has led them to confront some of the issues that face legal education. Where there appear to be common issues, and perhaps some purported resolutions, we examine their experience to see what they can offer.

Section VII relies in part on responses to a questionnaire that we sent to students and faculty at eight American law schools,

10. *E.g.*, A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* (1965) (2 vol.); J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* (1950); A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* (Carnegie Foundation for the Advancement of Teaching Bull. No. 15, 1921); Stevens, *Two Cheers for 1870: The American Law School*, in *LAW IN AMERICAN HISTORY* 405 (D. Fleming & B. Bailyn eds. 1971).

11. English legal educators have similarly studied the American system. *See, e.g.*, *REPORT OF THE COMMITTEE ON LEGAL EDUCATION*, CMND. NO. 4595, at 173-77 (1971) (Ormrod Committee report).

but we do not present our results as those of a rigorous survey. Major empirical studies sponsored by the American Bar Foundation¹² and the Law School Admissions Council are now underway.¹³ We cannot and do not intend to compete with such comprehensive research, for we lack the time and resources to do so.

Finally, as we noted at the outset, we intend neither to be prophets of doom nor knights errant for our own educational purposes and proposals. We present our impressions not as irrefutable facts, but as observations, ideas, and issues; we hope thereby to offer some insights and raise some questions that will contribute to the quality of contemporary debates about American legal education.

12. *See, e.g.*, the studies listed in AMERICAN BAR FOUNDATION, ANNUAL REPORT 14-15, 20-25, 31-33 (1976).

13. *See, e.g.*, the studies listed in LAW SCHOOL ADMISSION COUNCIL, ANNUAL REPORT 127-58, 267-91 (1976).

SECTION II

CONTEMPORARY ISSUES IN THE TRAINING OF THE AMERICAN LAWYER

Without question legal education in the United States has met the test of technical proficiency. The law faculties are superb; the law students are at least as good; the libraries are generally excellent; and the structures that house the law schools are often magnificent. In all these respects the law schools are stronger than ever before and better than their counterparts in any other part of the world. That is not good enough—at least in terms of what might have been.¹

As Robert McKay has noted, it may well be the best of times *and* the worst of times for American legal education and those institutions and associations that contribute to the professional training of lawyers. With the phenomenal “statistical” success of law training in this country over the past decade has come a swelling chorus of criticism, both from within and without the legal community. This mounting criticism is not too surprising because law schools *do* serve as a major training ground for political and cultural leadership and lawyers often *do* assume such leadership positions. The problem is that much of the criticism has been eclectic in nature and sometimes unfounded, while the responses to criticism have often been defensive and less than forthright. Fortunately, recent commentaries have helped to focus the debate, while the entry of the judiciary and even governmental agencies into the fray has accelerated the search for “excellence” in the profession.²

It is against this backdrop that we have attempted to sift through the various arguments in order to identify the most pressing and momentous issues facing those involved in the education and training of lawyers. We have classified the issues as follows:

- A. Alternative Priorities in Legal Education
- B. Alternative Structures in Legal Education

1. McKay, *Legal Education*, in *AMERICAN LAW: THE THIRD CENTURY* 261, 262 (1976).

2. *THE EDUCATION AND LICENSING OF LAWYERS* (1976) (papers prepared for a Council of Legal Education for Professional Responsibility conference on the education and licensing of lawyers, Nov. 18-21, 1976); *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice*, 67 F.R.D. 161 (1975); *INDIANA SUPREME COURT COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, PROCEEDINGS ON RULE 13 OF THE RULES ON ADMISSION TO THE BAR OF INDIANA BY WRITTEN EXAMINATION* (1975); H. PACKER & T. EHRlich, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972); *Symposium: New Directions in Legal Education and Practice*, 50 DEN. L.J. 389 (1974); *Symposium on Current Trends in Legal Education and the Legal Profession*, 50 ST. JOHN'S L. REV. 431 (1976).

- C. Alternative Methods in Legal Education
- D. Evaluative Stages and Techniques
- E. Professional Responsibility and Ethics
- F. Financing of Legal Education

These issues have provided the framework within which this study has been conducted. They are not intended to be mutually exclusive or exhaustive, but they have served the useful purpose of providing a logical focus to our inquiry. Although these issues are developed in some detail throughout the remainder of the study, they deserve brief definition at the outset.

A. *Alternative Priorities in Legal Education*

The first major issue confronting American legal education is best framed in the words of another commentator who stated: "We thus find ourselves somewhat uncomfortably impaled upon the horns of a dilemma. To be 'practical' is impractical. To be theoretical is practical. But to be theoretical does not in itself make one fit for practice."³ This tension between "practical" and "theoretical" training in the law is not new. The tension has most certainly gained intensity during the past few years as law schools have been accused of "cranking out helpless experts" who lack the skills to practice law;⁴ others assert that an increasing emphasis on skills training portends the demise of liberally based university law training and "the broad range of values and social interests that legal education is called on to cultivate."⁵ Ancillary concerns are raised by those who believe that a consuming desire to make students "think like lawyers" has given law training too narrow a focus when there is much to be gained from academic brethren in the social sciences and humanities that will contribute both to the law as a profession and the training of lawyers as professionals.

Another issue arising out of the practical-theoretical debate is whether law schools are training lawyers to practice chiefly with large "Wall Street" firms through an emphasis on library skills and legal analysis to the exclusion of needed practical training for those who will practice solo, with small firms, or with other more moderately funded legal entities. To put the matter another way: Are law schools exacting a high toll on public expectations

3. Nutting, *Training Lawyers for the Future*, 6 J. LEGAL EDUC. 1, 5 (1953).

4. Seidman, *Cranking Out Helpless Experts*, LEARNING AND THE LAW, Summer 1976, at 30.

5. Allen, *The Prospects of University Law Training*, 63 A.B.A.J. 346, 349 (1977).

and confidence by training a majority of fledgling lawyers almost exclusively in theoretical skills (analysis, writing, and research) that are then to be turned into applied skills through "on-the-job" training at public expense? It can be persuasively argued, of course, that the best way to learn lawyering skills is under the tutelage of a senior lawyer; however, unless the graduate does affiliate with a large firm or government agency (and ample statistical evidence exists to show that only a small minority of students do so),⁶ reality appears to dictate that practical training will be, at best, hit-and-miss.

B. *Alternative Structures in Legal Education*

The predominant pattern for legal education in this country requires the student to receive a baccalaureate degree, generally after four years of undergraduate education, and then to complete three additional academic years of full-time law study before the student is awarded the J.D. degree. This pattern is so pervasive and uniform that it has taken on a "lockstep" or "rites of passage" aura, much to the consternation even of many involved in law teaching. For example, the report of the Curriculum Study Project Committee of the Association of American Law Schools (Carrington report) stated in 1971:

Schools should free themselves of received dogmas, such as the conception that all graduates must be trained to omnicompetence, or that the first degree in law can be awarded only after three years of law study within the walls of a law school. Law school programs should reflect functional needs and break free of offerings and approaches that have nothing but longevity to commend them.⁷

The Carrington report has served as a catalyst, generating a good deal of discussion concerning alternative approaches to the present system, such as collapsing undergraduate and legal education into a six-year period or only requiring two years (four semesters) of law school for the J.D. degree.⁸ None of the alternative propos-

6. One recent survey, for example, revealed that, of all 1976 graduates from reporting law schools, only 6.5% associated with firms of 50 or more attorneys and 17.5% found employment with local, state, or federal governments. NATIONAL ASSOCIATION FOR LAW PLACEMENT, NATIONAL ASSOCIATION FOR LAW PLACEMENT: CLASS OF 1976, at 6-8 (1976).

7. CURRICULUM STUDY PROJECT COMMITTEE, ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971, at 1 (P. Carrington ed. 1971) (AALS 1971 Annual Meeting Proceedings, Part One, Section II).

8. See, e.g., Fellers, *There is No Magic in the Figure 3*, LEARNING AND THE LAW, Summer 1976, at 62; Manning, *Law Schools and Lawyer Schools—Two-Tier Legal*

als are presently being hailed as the elixir of good health for legal education, but there does appear to be an encouraging movement toward diversity.

Inherent in any expression of concern about the time sequence for legal study is an equal disquiet about the form and focus of the law school curriculum. There is a sense of uneasiness that law schools have turned their attention from the basic course of rigorous study required of those entering a learned profession to one of diluted criteria and interdisciplinary esoterica. As voiced by one frustrated observer of the legal education scene, "law students are being permitted to carry on the same finger-painting exercises they began in college."⁹ To further illustrate their point that legal education has become nothing more than academic "sandboxes," some detractors point to the pass-fail or other similar grading system variations that flowered in the late 1960's and early 1970's and that still remain in many law schools as contributing to a lowering of academic expectations and standards. In response, those advocates of wider curricular choices and significant procedural innovations in the operation of the legal education enterprise often claim that arguments against attempts at creativity are really vestiges of a "trade school" mentality and therefore anti-intellectual. Which of the various positions are intellectually and pedagogically most sound is certainly arguable. These clashes, increasingly frequent among those holding strong and diverse views regarding the necessity of structural reform in the educational apparatus, stand as a challenge to the conventional wisdom that legal education is a monolith unyielding to fresh ideas.

C. *Alternative Methods in Legal Education*

Christopher Columbus Langdell, if he were alive today, would likely be surprised that the case study method which he pioneered at the Harvard Law School a century ago remains well intact in many if not most law schools. His surprise would probably stem from both a desire to continually improve the training process for lawyers and the realization that little innovation on his own model has occurred over the past one hundred years. There have been some changes, but, when compared with other

Education, 26 J. LEGAL EDUC. 379 (1974); Stanley, *Why Not Let the Bar Take Over the Third Year of Law School?*, B. LEADER, July 1976, at 18.

9. McLaughlin, *Law Schools Must Demand that Students Learn Law*, B. LEADER, July-Aug. 1975, at 18.

professions and graduate disciplines, movement would be measured in inches and not in miles. There is, of course, no need to innovate for innovations' sake, although Langdell would probably be the first to admit that his case method of study was not intended as a universal remedy but only as a response to the acute educational problems of his time.

Those modifications in teaching strategies that have been attempted have not been greeted with catholic acclaim. Perhaps the most significant recent innovation, and likewise the most controversial, is the adoption by many law schools of some form of clinical educational opportunity for their students. Clinical legal education has been hailed as the device that will move the student from studies of law through appellate cases to encounters with pertinent experience. The theory is that if students work with real clients on real cases, they will be better prepared to immediately and competently undertake the myriad tasks required of lawyers upon graduation. This is consistent with the best Holmesian tradition that the life of the law takes on meaning through immediate experience. Countervailing concerns do exist: Clinical legal education, if properly supervised, is expensive and, even if done correctly, is an exhausting and often frustrating experience for clinician and students alike because the flow of a case does not fit naturally into a normal academic time sequence. It has been difficult to find both committed and competent people to assume clinical teaching positions, given the high level of expected involvement and the relatively low status accorded clinicians. Moreover, there is no agreement that law schools are the appropriate place for practical legal training, especially when students have increasing opportunities to clerk with lawyers during the summer and on a part-time basis. A logical extension of that argument is that the practicing bar should assume the major responsibility for training its neophytes in the practice once they have gained analytical and research skills from the classroom. When viewed from a neutral corner, both sides appear to have meritorious arguments. It is undeniable, however, that the clinical legal education movement has caused many to reexamine their views about legal education.

While the past decade has seen vast amounts of educational energy expended on debating the merits of curricular reform centered on clinical programming, other, more quiet changes have been occurring. For example, legal education has not proven as impervious to technological change as was once thought. Acro-

nyms such as LEXIS, PLATO, EDUCOM, and TICCIT,¹⁰ although certainly not in the lexicon of every law teacher or lawyer, are becoming more familiar as the processes they represent take on academic integrity. But many lawyers, perhaps by their very nature, do have a tendency to harbor suspicions of the "modern" that is often reflected in their unwillingness to learn from developments in other disciplines. Although it is at the moment empirically unprovable, a reversion to old suspicions with a concomitant failure to use the new technology may arguably produce "lawyers who are obsolescent the day they graduate."¹¹

Computer-based teaching aids are not the only significant technological development to impact on legal education. The portable videotape machine and "mini-kam" make it much easier to turn the classroom experience into a multidimensional teaching tool as the professor is able to review a student's performance in class while both are viewing an instant replay. Videotape equipment also increases the effectiveness of simulated problemsolving exercises when one instructor can effectively supervise many more student participants because tapes can be reviewed at the instructor's leisure for comment and criticism.

These examples of technological development and its importance to legal education are not meant to overshadow the significance of other developing alternatives to traditional teaching strategies. The wider use of problemsolving techniques, research seminars, drafting exercises, guided study programs, and interdisciplinary courses does not necessarily portend the immediate collapse of the Socratic method, but it does attest to an increasing realization that pedagogical pluralism is healthy.

10. LEXIS is the Legal (*LEX*) Information System developed by the Mead Data Central Corporation as an on-line legal research data base allowing full-text retrieval and containing selected federal and state cases and statutes.

PLATO stands for Programmed Logic for Automatic Teaching Operations developed at the University of Illinois-Urbana. It is a multimedia, on-line, interactive teaching system adapted to teaching a great variety of subject matter, including legal material.

EDUCOM comes from Educational Communications, a membership organization concerned with the promotion and facilitation of the shared utilization of computers and data communications between educational institutions of higher education. This organization performs studies and arranges interuniversity cooperative ventures.

Finally, TICCIT is the acronym for Timeshared Interactive Computer Controlled Information Television. This system is being developed by the Hazeltine Corporation and is a television- and keyboard-based system designed for interactive teaching of a wide variety of materials. TICCIT was originally developed by the MITRE Corporation and Brigham Young University under a National Science Foundation grant.

11. Manning, *Nose to Nose with Experience*, *LEARNING AND THE LAW*, Summer 1976, at 60.

D. *Evaluative Stages and Techniques*

The legal education process can be viewed as a pathway with a series of gates: admission into law school, evaluations while in law school, admission to the bar, and, most recently, requirements for continuing legal education. With the demise of the apprenticeship system in this country, law schools now have a virtual monopoly on determining who will and will not enter the profession. This monopolistic position has put a great deal of pressure on law schools from applicants, members of the bar, and the public to establish better techniques to determine who should enter law school and eventually the legal profession.¹² At the same time, swelling numbers of applicants have forced law schools to rely more heavily on undergraduate grade point averages and scores on the Law School Admissions Test.¹³ In an attempt to counteract a mechanistic trend and to be more responsive to social issues, many schools have adopted special admissions programs for the educationally disadvantaged; these programs have themselves spawned spirited debate and litigation.¹⁴ Faced with large numbers of applicants for a finite number of positions, law schools, as the gatekeepers to the legal profession, find themselves at a crossroads. They must now address basic questions about who should be admitted into law schools in light of the needs of both the profession and society. At present, the available

12. See generally Cabranes, *Careers in Law for Minorities: A Puerto Rican's Perspective on Recent Developments in Legal Education*, 25 J. LEGAL EDUC. 447 (1973); Consalus, *The Law School Admission Test and the Minority Student*, 1970 U. TOL. L. REV. 501.

13. For example, 136,094 candidates for admission into law schools were administered the LSAT for the 1974-1975 academic year to fill approximately 40,000 first-year seats in American Bar Association (ABA) approved law schools. LSAC NEWS AND NOTES, Sept. 1975, at 1. In all fairness it must be noted that application pressures have eased somewhat during the past several years. In 1973-1974, 117,886 candidates for admission were administered the LSAT during examinations given in October, December, February, and April (excluding the July, 1974 administration). *Id.* For the same period in the 1976-1977 academic year, only 106,873 candidates for admission took the LSAT, a 10% decrease. *Id.* Summer 1977, at 1.

14. *DeFunis v. Odegaard*, 416 U.S. 312 (1974), challenged the assumptions of minority admission programs as representing, in actuality, reverse discrimination and therefore being violative of the Fourteenth Amendment. Since *DeFunis* was ready to graduate from law school after having been admitted in compliance with the trial court order, the United States Supreme Court was able to avoid the issue by declaring the case moot. The issue of reverse discrimination subsequent to that time has not been dormant. The Supreme Court heard a medical school admission case during the October 1977 term of the Court. See *Bakke v. Regents of Univ. of Cal.*, 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976), cert. granted, 429 U.S. 1090 (1977). See also M. REDISH, *PREFERENTIAL LAW SCHOOL ADMISSIONS AND THE EQUAL PROTECTION CLAUSE: AN ANALYSIS OF COMPETING ARGUMENTS* (Law School Admission Council Pub. No. LSAC-75-4, 1976); O'Neil, *Preferential Admissions: Equalizing Access to Legal Education*, 1970 U. TOL. L. REV. 281.

evaluation criteria have achieved some success in predicting law school performance based upon traditional norms, but the problem remains that such predictions may be irrelevant when juxtaposed against broader societal needs and expectations.¹⁵

Once students are admitted to law school, questions regarding evaluation techniques are equally troublesome. In response to the student unrest of the 1960's, a number of law schools modified their grading procedures to some variation of the pass-fail method. Such procedures were generally short-lived. Today, most law schools grade on either a letter or numerical system.¹⁶ The issue still remains, however, whether it is possible to make such fine shading as are required by the traditional grading systems when many of the students are equally bright and a teacher only has one or two papers and essays from which to make such judgments. Similarly, the manner of testing in law schools is also being questioned by some commentators who ask whether the range of experiences to which a lawyer is exposed and expected to respond can be properly assessed in the unidimensional essay format.¹⁷ The contention is that, as more pluralistic educational processes have developed within law schools, evaluations that assess these new expectations should also be created. The popular notion for the moment is that we should be testing for "competency." Such talk tends to make many academicians uneasy because of the fear that testing formats which measure competency will divert law schools away from multiple goals to single-purpose "trade schools" with bar examination passage as their primary objective.

15. The legal education community is not unaware of the need to know more about the profession and to develop evaluation criteria and "gatekeeping" measures relevant to the practice of law. The Law School Admission Council (LSAC), in conjunction with the AALS, the American Bar Foundation (ABF), and the National Conference of Bar Examiners, have undertaken a four-phase study to look at the interrelationships between legal education, admission to the bar, and the work of lawyers. Phase I has already been completed. See A. CARLSON & C. WERTS, *RELATIONSHIPS AMONG LAW SCHOOL PREDICTORS, LAW SCHOOL PERFORMANCE, AND BAR EXAMINATION RESULTS* (Law School Admission Council Pub. No. LSAC-76-1, 1976).

The ABF has also undertaken a program of studies on legal education under the direction of the ABA Special Committee for a Study of Legal Education chaired by Ronald Foulis. These studies will "provide in-depth understanding of the processes and products of legal education previously unavailable to legal educators and the legal profession." AMERICAN BAR FOUNDATION, *ANNUAL REPORT* 16 (1975). Once the LSAC and ABF studies are completed, much more informed decisions concerning law school and bar admission standards and criteria can be made.

16. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., *SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1976-1977* (1977).

17. See Kelso, *Testing Generally in the Law and Clinical Programs*, in *THE EDUCATION AND LICENSING OF LAWYERS*, *supra* note 2, at 129.

Once graduation day comes, the law student in most jurisdictions must still sit for a bar examination prior to being admitted to practice. It is not surprising that law students with almost unanimous accord express dissatisfaction with bar examinations *prior* to taking one. Their argument is simple: If students graduate from an accredited law school that has already validated their lawyering skills, it is a useless process and indeed a vote of no confidence in the law schools to make the students take yet another examination.¹⁸ Perhaps the more serious expressions of concern come from academicians and some practicing members of the bar. It has been suggested that "the present form of bar examination tends to promote mediocrity rather than excellence and that it constitutes an undue interference with the process of legal education."¹⁹ It can hardly be contested that most law students keep both eyes on bar admission requirements while selecting among course offerings in law school.²⁰ Given the long shadow of the bar examination, Professor Charles Kelso has posited that "[b]ar exams are inhibiting the breadth and, particularly, the depth of the law from reaching students and, probably, are inhibiting the offering and acceptance of practical skills programs and other more ambitious lifetime learning experiences (formal and informal) necessary for lawyers."²¹ If that is true, bar examinations may be running crosscurrent to their designed purpose, which is to determine whether a candidate has acquired the minimum skills and knowledge to treat legal issues in a "lawyer-like" fashion.

It can likewise scarcely be surprising that a majority of practicing lawyers support the continuation of bar examinations in some form. Bar examinations are viewed as a means of protecting the public from individuals who do not meet minimum competency and ethical standards. Bar examinations arguably act as a leavening influence in law schools by assuring that certain basic courses must be offered because their content will be liberally sprinkled throughout the bar examination. Some maintain that bar examinations will also act as a quality check on legal education institutions by making passage rates public knowledge. One

18. Five states, Mississippi, Montana, South Dakota, West Virginia, and Wisconsin, provide graduates of the state university law school automatic admission to the state bar as a diploma privilege. NATIONAL BAR ASSOCIATION DIGEST (R. Duffy ed. 1977).

19. Blackmar, *Do We Really Need Bar Exams?*, B. LEADER, July 1976, at 2.

20. See, e.g., D. JACKSON & E. GEE, *BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975).

21. Kelso, *In the Shadow of the Bar Examiner, Can True Lawyering be Taught?*, *LEARNING AND THE LAW*, Winter 1976, at 40.

observer has even contended that “[i]f the bar examinations were removed, some schools, perhaps many, might deteriorate drastically under Gresham’s Law, with the poorer schools putting pressure on the better ones.”²² Although arguments pro and con concerning bar examinations have some merit, it must be observed that they are somewhat tainted by whether a particular proponent is on the outside looking in or is on the inside looking out.

Finally, a new evaluation rite appears to be developing by linking demands for the effective delivery of legal services and continuing legal education (CLE). The public has the right to competent counsel, and arguably this competency can only be assured through lifelong education. An increasing number of states are now requiring that all members of their bars enroll in continuing legal education courses in order to retain their license to practice law. Such proposals are not without problems, however, because it is difficult to assure attendance and even more difficult to assure quality. This has led some to propose the next logical step: a periodic reexamination of lawyers. Accompanying these proposals for mandatory CLE and recertification is the idea that lawyers should be able to hold themselves out as subject matter specialists by taking a specialty examination and/or practicing in a particular field of law for a period of time. Specialization, it is hoped, would provide the public with quality legal services at a reduced cost. Whether mandatory CLE, recertification, and specialization will become the professional norm is yet to be determined, but tendencies in that direction do hold forth some hope that lawyers are rethinking their professional commitments.

E. Professional Responsibility and Ethics

Unquestionably, one of the major issues facing legal educators and bar leaders in this post-Watergate era is how they can best imbue the profession with renewed attention to ethical concerns. Law schools were quick to respond to criticism directed at their supposed failure to properly teach their charges professional responsibility and ethics by urging the American Bar Association (ABA) Section on Legal Education and Admission to the Bar to amend its *Standards for the Approval of Law Schools*. The *Standards* were amended by the ABA House of Delegates in 1973 to read: “The law school shall offer . . . and provide and require

22. Griswold, *In Praise of Bar Examinations*, 60 A.B.A.J. 81, 83 (1974).

for all student candidates for a professional degree instruction in the duties and responsibilities of the legal profession."²³ The result was an explosion of course offerings on professional responsibility as well as institutionalization of other programs, such as the planned pervasive method²⁴ or clinical legal education, that were intended to remedy the students' ethical illiteracy. Unfortunately, as has been noted, all too often "whatever a law school's program, most law students and faculty can testify that the glowing generalities in law school catalogues about the importance of the role and responsibilities of the lawyer have rarely been translated in corresponding proportion into the daily life of curriculum and cocurricular programs."²⁵

The reasons given for a less than effective professional responsibility program at many schools include a lack of enthusiasm on the part of the teachers and students for such courses, the failure to have a master plan to help coordinate and synthesize various class and other activities through which professional responsibility can be taught, and a dearth of effective materials that can be used to transmit ethical concerns. In addition, it is charged that in the one area where a student can confront live ethical problems, the law school clinic, not enough opportunities are provided students to participate in clinical work and insufficient resource support is given the clinical instructor so that ethical problems that do arise in the clinical context can be effectively turned into teaching moments. Even with this sputtering start, law schools have registered some successes and most appear committed to continuing attempts to discover more effective methods for teaching their students professional responsibility and ethics. This assessment of law school efforts is much kinder than a similar assessment of the professional bar which has generally failed to assume its responsibilities for training its own members, preferring instead to put the responsibility back on the law schools or elsewhere and then standing in judgment when failures occur. Finally, all the discussion of how professional responsibility should be taught must be kept in perspective because "proper ethical standards probably depend more on character than on

23. AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS: STANDARDS AND RULES OF PROCEDURE § 302(a)(iii) (1973).

24. The "planned pervasive" method of teaching professional responsibility envisions each faculty member in the law school assuming responsibility to identify and discuss ethical issues as they arise within the context of his or her particular course.

25. Kionka, *Education for Professional Responsibility: The Buck Stops Here*, 50 DEN. L.J. 439, 441 (1974).

specific training, and that character is generally formed before the student comes to law school."²⁶

F. *Financing of Legal Education*

Professors Packer and Ehrlich provide a sobering description of the financial state of legal education and identify what well may be the most important issue facing law schools and the legal profession:

Thus, in a way, we are whistling in the wind in discussing reforms in legal education. In all probability we are, for the short term at least and maybe longer, entering a time of depression in higher education. Even before that depression, law schools were too poor to innovate, even when the ideas and justifications for them were available and clear. The *Journal of Legal Education* is a graveyard of ideas that died or were stillborn because their authors never considered the traditional financial limitations on law schools.²⁷

In the final analysis, dollars act as the lubrication to insure innovation and creativity, much of which will die aborning if law schools continue to be "education on the cheap."

Legal education is indeed cheap when compared with other forms of professional education. For example, the student-faculty ratios in most medical schools are one-to-one or two-to-one and in other graduate schools about five-to-one. Law schools are very fortunate if they achieve a twenty-to-one student-faculty ratio. These figures alone should demonstrate to the most skeptical observer that legal education is a comparatively inexpensive effort.

This is not to suggest, however, that legal education is inexpensive from a consumer perspective or that sufficient resources always exist to fund needed programs. Tuition costs, especially among private institutions, have been rising at a near exponential rate. This has caused some concern that the legal profession will turn into an almost exclusive upperclass monopoly with only the very wealthy, and to a lesser degree the very poor who qualify for financial aid, able to afford the costly opportunity of a legal education. Such rising costs may effectively exclude the middle class from being able to attend all but the most inexpensive public and private institutions. Even with higher tuition, some law schools

26. Griswold, *The Legal Profession in the United States*, in *LEGAL INSTITUTIONS TODAY: ENGLISH AND AMERICAN APPROACHES COMPARED* 125, 133 (1976).

27. H. PACKER & T. EHRLICH, *supra* note 2, at 69.

may not be able to maintain the present quality of programs due to increased salary and library costs and the general law explosion that requires schools to offer many more courses just to meet minimum educational needs.

In all fairness, it must also be noted that many law schools make money for their parent institutions. In times of rising costs for higher education in general, university presidents (a number of whom have been legal educators) see an opportunity to use law school generated moneys, which could be well used for program innovations in law schools, to benefit the rest of the institution. Whether this is "good" is arguable, but with so many students seeking entrance into law schools, it smacks of some expediency.

With law schools struggling to maintain a static financial position, any talk of curricular or pedagogical reform must be accompanied by a revolution in the financing of legal education. An example of what can be done is seen in the development of clinical legal education for which a private foundation, the Council on Legal Education for Professional Responsibility (CLEPR), gave seed grants to law schools to start clinical programs. Many of those programs have grown and flourished. Without CLEPR's initial grants, clinical legal education could still be in a dormant state. This is not to say that clinical legal education is inexpensive nor to contend that there are not major problems with institutions accepting "soft" money. It is cited only in support of the proposition that new financing approaches can be found which will, in turn, give creative ideas a place in the sun; these ideas will then have to survive in the marketplace on their own merits. Other sources of financial help must come from the federal government, corporations, and employers of law graduates, all relatively untapped resources by law schools. Most importantly, law schools should be able to turn to the legal profession for support, especially since the profession is the major source of criticism of the present state of legal education. Unfortunately, not only has such support not been forthcoming, but it has had a detrimental impact on fund raising generally. As one commentator has noted:

The disinterest of nonlawyers in the problems of our law schools is neither surprising nor a ground for fair criticism. Non-lawyers assume that the Bar, as a learned profession, is interested in its own education, is generally well-to-do, is able to look after its own and presumably is doing so.

But the fact is that the Bar by and large provides almost no financial support for legal education, has only the remotest

idea of what is happening inside the law schools, is unaware that they are in financial trouble and does not know why.²⁸

Legal educators must surely carry much of the criticism for failing to transmit the knowledge of their financial plight to the profession, and educators must also take the blame for isolating legal education from the rest of the profession; however, lawyers too must be censured for being quick with criticism and slow with positive support and suggestions.

G. Conclusion

No attempt has been made in the above discussion to consider in depth some of the contemporary issues in the training of the American lawyer. Our purpose has simply been to present the questions that will be further developed throughout this study. Before we turn to that further development in Sections VI, VII, and VIII, it is instructive to determine what perspectives the history of legal education and bar admission in the United States, the experience of England, and the experiences of other professions offer on current issues in American legal education.

28. Manning, *Financial Anemia in Legal Education: Everybody's Business*, 55 A.B.A.J. 1123, 1123 (1969).

SECTION III

AMERICAN LEGAL EDUCATION AND THE BAR: HAND IN HAND OR FIST IN GLOVE?*

A. Introduction

1. *The American lawyer: A new breed*

The American colonies in the 17th century, individual and independent entities founded by dissimilar groups pursuing purposes of their own, differed markedly in their approaches to law, lawyers, and legal education. Two conditions were common to each of the colonies in varying degrees, however: a dearth of any organized body of law suited to the American scene and a distrust of anyone professing to be a lawyer.¹

The majority of the colonies did not feel themselves bound in all cases to the common law of England, but, on the contrary, often modified or even completely rejected English precedent by their own statutes.² The reasons for this seemingly unorthodox behavior by English colonies are several and not difficult to determine. First, the common law in the 17th century was an extraordinarily harsh taskmaster; indeed, many of the settlers who left England for these shores did so because of what they felt to be unfair treatment at the hands of the English judiciary. Such settlers, beginning a new society in America, had no vested interest in preserving the strict traditions of the common law. Second, the frontier society of the colonies did not lend itself to adopting wholesale the legal systems employed in the tightly knit, well-organized society that existed in England. Third, those appointed to the bench were generally prominent men of the community who lacked any legal training and thus did not have an appreciation for the formalism of the common law. Finally, "[t]he highly unstable and fluid status of the law in the several colonies was further aggravated by the fact that authoritative legal materials were extremely scarce and, in some instances, simply nonexistent

* Portions of this Section have already been published by the American Bar Association Section on Legal Education and Admission to the Bar. Gee & Jackson, *Hand in Hand or Fist in Glove?*, *LEARNING AND THE LAW*, Winter 1977, at 34.

1. O. CHITWOOD, *A HISTORY OF COLONIAL AMERICA* 190 (1931).

2. 1 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 11 (1965). Possible exceptions were New Jersey, Virginia, Georgia, and perhaps New York, where, as Chroust notes, "the common law of England was received at a fairly early date and in a relatively complete manner . . ." *Id.* See also P. REINSCH, *ENGLISH COMMON LAW IN THE EARLY AMERICAN COLONIES* (1899).

in America."³ Thus, in their early history the colonies had neither the means nor the desire to adopt a coherent, consistently interpreted body of law.

Lawyers were hardly a popular class of citizens in the colonies before the turn of the 18th century. Stories of fast-tongued, avaricious lawyers preying upon the naivete of their clients remain common to this day. But whereas lawyers of the present are usually accorded a degree of public tolerance and respect as professionals, practitioners of that day were generally denied any semblance of honor and respectability. The New England colonies were settled by Puritans who attempted to square those principles of statutory and common law that they adopted with biblical authority, particularly the law of Moses.⁴ Unfortunately for those poor souls professing to be lawyers, the Puritans were well aware that, as Boucher d'Argis stated, "[u]nder the law of nature and Moses there were no lawyers."⁵ Thus, lawyers were treated by the religious New England colonists with that peculiar degree of ostracism only accorded those who engaged in activities contrary to the divine will. The influential class of citizens in the central and southern colonies, composed mostly of landowners and merchants, did not base its opposition to lawyers on scriptural grounds or moral scruples. The class was nonetheless untiring in its efforts to subvert a developing group of legal experts who could threaten its position of prominence and power. The general populace also condemned lawyers, associating them with the strict and unpopular common law and attributing to them as a group the shrewd dealings of unethical practitioners and the damaging advice of untrained ones.⁶ In addition to such opposition, the lack of an organized body of colonial law obviated the need for a trained group of lawyers to assist in the law's administration and interpretation, contributing to the "general prejudice against lawyers throughout the colonies, [such that] the practice of the legal profession was discouraged by a number of legislative enactments."⁷

3. 1 A. CHROUST, *supra* note 2, at 18. For a general discussion of the reasons why the colonies so freely handled the common law, see *id.* at 3-26.

4. O. CHITWOOD, *supra* note 1, at 191. See also 1 A. CHROUST, *supra* note 2, at 7-8, where the author notes: "an early attempt at systematizing and codifying the law in Massachusetts, an attempt which dates back to the year 1636, was founded largely on the Old Testament, and was referred to by the significant description, 'a model of Moses his judicalls [sic], compiled in an exact method.'"

5. *The Early Days of Advocacy*, 1 GREEN BAG 540 (1889).

6. 1 A. CHROUST, *supra* note 2, at 27-28.

7. O. CHITWOOD, *supra* note 1, at 190.

These conditions were hardly conducive to the development of methods to train competent legal practitioners. It was not until the beginning years of the 18th century, when a significant influx of English-trained attorneys upgraded the qualifications of practitioners in general, that the reputation of the American lawyer began to improve. Correspondingly, the acquisition of legal training for professional reasons, not just for personal edification, gradually became a more honorable enterprise.

Such were the modest, if not shaky, origins of American legal education. From such apparently infertile ground would develop a variety of methods and theories for the training of the practitioner.

2. A recurrent theme: Practical experience versus academic education

While the system of apprenticeship, inherited from English precedent, naturally assumed the major role in educating the first significant numbers of American attorneys, the system had obvious disadvantages, including the lack of a systematic approach to legal training. Partly as a reaction to the deficiencies of the apprenticeship system, other methods were alternately attempted that became important in developing the system of legal education prevalent today. Early endeavors to establish law lectures in a university setting as part of a general liberal arts education were largely unsuccessful, but they did draw attention to the possibility of teaching law in the classroom instead of in the lawyer's office. The proprietary (or private) law school, as typified by the Litchfield School, was essentially a specialized and enlarged law office; however, its systematic method of teaching contrasted sharply with the often arbitrary and capricious method of instruction generally inherent in the apprenticeship system. Although it did not long maintain a position of prominence, the proprietary law school served as an intermediate stage in the development of that form of legal education that would eventually supersede the apprenticeship system in importance: the university-related law school.

Forces that were, strictly speaking, extrinsic to legal education also played important roles. The egalitarian, anti-elitist philosophy of Jackson's era prompted an assault on previously strict educational and apprenticeship requirements. The result was that almost anyone—with or without substantial legal training—was permitted to enter practice. The existence of bar admission requirements also exercised a constant influence on legal

education both antedating and postdating the age of Jackson. Illustrative was the elimination or reduction by many states of the apprenticeship requirement for admission to practice that clearly helped to undermine the importance of that system of legal education. Later, as the university-based law school became more prevalent, the American Bar Association (ABA), and the Association of American Law Schools (AALS) successfully pressed for higher admission standards. As state legislatures acted on the advice of the ABA and AALS and demanded more of prospective lawyers, legal educators often molded their curricula to fit bar admission requirements, a practice that is still frequently observed today.

One problem in chronicling the history of legal education (or any portion thereof) is that retrospectively the different movements involved often appear to be discrete occurrences. For example, it appears to the modern observer, with his awareness that law schools are the almost universal means of attaining legal education, that this has long been the case and that once the university-related law school came into existence, it automatically superseded other forms of legal education. In reality, of course, such was not the case. The apprenticeship system, the private law school, and the beginnings of the university-based legal education all existed concurrently and in competition with one another. Extrinsic social, economic, and political influences also added in no small measure to the swirl of this fluid historical situation.

The purpose of this Section is not to attempt the Herculean and possibly fruitless task of categorizing the different periods of development in legal education or the exact reasons for these developments, but rather to provide a historical perspective to the larger issues of competency training and legal education to be explored in the remainder of this Article.⁸

B. Legal Education Prior to 1870: Challenges to the Apprenticeship System

Prior to and for some time after the American Revolution, it was possible to obtain a legal education in any one of a number of ways: the lawyer-aspirant could by his own reading of available

8. The reader should note that the term "legal education" is being used throughout this Section in the broadest sense and includes all of its component parts: influences from bar admission requirements, from the ABA and AALS, and from other outside sources on the educational process for prospective lawyers.

legal materials hope to gain the requisite knowledge and skills; he could serve as an assistant in the clerk's office of some court; he could attend one of the nation's fledgling colleges that provided by means of a general education a firmer foundation for the independent study of law; or he could attend one of the Inns of Court in England.⁹ Without question, however, the principal means of obtaining a legal education in America was through the apprenticeship system.

It is not surprising that such was the case. The great majority of American lawyers had been trained themselves by the apprenticeship system. Perhaps they had inherited from their English forebearers a feeling of responsibility for the legal education of those coming after them. Perhaps they desired to control the entry of new lawyers into their own profession. In any event, full-time study of the law at a college or university, when available at all, was an expensive luxury in what was still primarily a pioneer America. Furthermore, it was felt that the practical nature of a lawyer's duties did not lend itself to easy study in the classroom.

The rationale underlying the apprenticeship system was persuasive and its implementation, at least on the surface, was practicable. An apprentice attached himself to a practitioner with the expectation of learning something about the body of the law as well as some of the practical aspects of being a lawyer. Meaningful day-to-day contact with an experienced attorney would provide not only sufficient educational opportunities to learn the law, but also the experience necessary to apply that new-found knowledge. This system was particularly well-suited to a time in which the body of existing law was not extensive, and thus in which the ability to analyze and synthesize vast amounts of material was subservient to the more practical skills of drafting and oral advocacy.

The apprenticeship system depended heavily upon the teaching ability and the attention given by individual practitioners to the supervision of apprentices in their offices. As administered by some of the better attorneys, this system of legal education was a success. An example of one of the more effective law office apprenticeship programs was that of Lemuel Shaw in Massachusetts. He had a relatively well-structured program and took on several apprentices. He encouraged his students to pursue a specific course of study and report to him weekly on their prog-

9. 1 A. CHROUST, *supra* note 2, at 30-37.

ress. He also allowed and even encouraged his apprentices to discuss the law with him "especially in reference to those changes and alterations of the general law which may have been effected by the Statutes of the Commonwealth and by local usage"¹⁰

Such was not always or even generally the case, however. The quality of legal education varied greatly depending on the concern of the practitioner for his duty to train future members of the profession. Many, possibly most, practitioners lacked the appropriate sense of duty (or perhaps their senses were dulled by the necessity of earning a living), and thus apprentices were frequently used as a source of cheap labor. They were expected to hand copy legal documents, serve process, and perform mundane tasks in the practitioner's office. Professor Greenleaf of Harvard, describing his and Judge Story's experience with the apprenticeship system, observed that they were also expected, "amidst the drudgery and interruptions of the lawyer's office, [to] perus[e] with what diligence we could our Blackstone, Coke, and other books put into our hands."¹¹

Indictments of the apprenticeship system by those who suffered under capricious and inattentive practitioner-teachers were voiced early and often severely. William Livingston, one of four brothers who pursued higher education at a time in the colony of New York when this was still unusual, levied this charge against the system:

[If lawyers] deserve the Imputation of Injustice and Dishonesty, it is in no Instance more visible and notorious, than in their conduct towards their Apprentices These Gentlemen must . . . have no Manner of Concern for their Clerk's future Welfare [W]hoever attentively considers how these Apprentices are used . . . would certainly imagine, that the Youth was sent to the Lawyer on Purpose to write for him I averr [*sic*], that 'tis a monstrous Absurdity to suppose, that the Law is to be learnt by a perpetual copying of Precedents.¹²

Thomas Jefferson, while noting that there was some advantage in serving a period of apprenticeship, echoed the sentiments of many a law clerk then as now "that the services expected in

10. F. CHASE, *LEMUEL SHAW* 120 (1918), *quoted in* 2 A. CHROUST, *supra* note 2, at 174. Likewise, Theophilus Parsons of Massachusetts and Benjamin Kissam of New York enjoyed the praise of those who trained under them. 1 A. CHROUST, *supra* note 2, at 32-33.

11. *Quoted in* Brandeis, *The Harvard Law School*, 1 GREEN BAG 11 (1889).

12. 1 A. CHROUST, *supra* note 2, at 31-32 (quoting *New-York Weekly Post-Boy*, Aug. 19, 1745).

return have been more than the instructions have been worth."¹³ Complaints of this sort were legion.

The great majority of the legal profession supported the apprenticeship system despite its defects. No system, however, that was administered at the expense of the student and that so clearly failed to provide systematic legal training could long survive. The first seeds for the demise of the apprenticeship system were sown even while that system was yet gaining momentum.

1. *Early attempts at academic training in the law*

Partly in reaction to the inadequacies of the apprenticeship system and partly in an effort to make sure that "the Body of the People [were] well instructed in their Laws, Rights, and Liberties,"¹⁴ law lectures were initiated at some universities. Thomas Jefferson founded the first of these professorships with the appointment of his former legal preceptor George Wythe to a chair of law at William and Mary in 1779.¹⁵ Similar professorships were soon established at Yale, Columbia, the University of Maryland, and Harvard.¹⁶

Those selected to fill these early chairs of law were largely prominent men from the bench or practicing bar and not primarily academicians, and thus must be distinguished from those who taught natural law, moral philosophy, and other law-related subjects at some colleges and universities. George Wythe was an eminent law office teacher and reviser of the Virginia statutes. Isaac Parker of Harvard was the Chief Justice of the Massachusetts Supreme Court. James Kent of Columbia produced the first systematic treatise on American law.

The strength of the apprenticeship system at this early point, however, was not to be assailed by so meager a challenge from the academic world. Those in favor of a "practical education" in a lawyer's office easily prevailed, and these early attempts at developing a law faculty as part of a university were largely unsuccess-

13. 2 A. CHROUST, *supra* note 2, at 176 n.12 (quoting 5 WRITINGS OF THOMAS JEFFERSON 180 (Ford ed. 1903-1904)).

14. 2 A. CHROUST, *supra* note 2, at 189 (quoting President Ezra Stiles' program for a law professorship at Yale).

15. A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 116 (Carnegie Foundation for the Advancement of Teaching Bull. No. 15, 1921). Reed, a nonlawyer, was selected by the Carnegie Foundation to do a comprehensive study of American legal education systems similar to the Flexner report for medical schools. Note 63 and accompanying text *infra*.

16. Stevens, *Two Cheers for 1870: The American Law School*, in LAW IN AMERICAN HISTORY 405, 414-15 (D. Fleming & B. Bailyn eds. 1971).

ful. A.Z. Reed advances a two-fold explanation for their failure. On the one hand, the bar felt that the apprenticeship system was sufficient to prepare young men for the bar. On the other hand, there was the rise of the non-university related private law school as an alternative to both the apprenticeship system and the university law lecture.¹⁷

2. *The proprietary law school*

The private or independent law school was a natural outgrowth of the apprenticeship method of legal education. Early proprietary schools have been characterized as "essentially . . . specialized and elaborated law office[s]."¹⁸ These schools, not being associated with universities, were unaffected by scholarly dogmatism and had as their primary purpose the training of practitioners. While retaining the influence of the practicing bar, however, proprietary schools also adopted a more systematic approach to legal education than ordinary law office training and thereby highlighted the obvious disadvantages of the apprenticeship system. Thus, although the rise of the private, non-university-related law school was a factor that contributed to the failure of early university attempts to teach law, this movement also proved important in dislodging the apprenticeship system.

The first and most famous private law school was the Litchfield School founded in 1784 by Tapping Reeve. The pedagogical method employed at Litchfield was a series of highly systematic lectures in a yearlong course. The curriculum was based on Blackstone, with some addition and revision to make it current with the developing law in America. Subjects taught included property, contracts, procedure (including forms of action and pleading), commercial law (including bills, notes, and insurance), agency, master and servant, and several other legal subjects.¹⁹ An interesting peculiarity of Litchfield was that instead of attempting to publish their lectures as would have been done in a university setting, the lecturers kept them secret. These lectures were considered to be valuable resources that helped make the school unique and were not to be made available for public use. In an advertisement for the school published in 1829 the school noted that its "proud pre-eminence . . . is to be attributed to the advantages, which the mode of instruction here prescribed, pos-

17. A. REED, *supra* note 15, at 126-27.

18. *Id.* at 128.

19. 2 A. CROUST, *supra* note 2, at 211-12.

sesses over the systems usually adopted in similar institutions.”²⁰

Litchfield was the first national law school. While the number of students it graduated was small in comparison to today's standards—slightly more than one thousand in its history—its graduates came from all parts of the country. The school offered proof of the effectiveness of its methods in the large number of legislative and judicial notables that passed through its classrooms. Its alumni included Vice Presidents of the United States, Justices of the United States Supreme Court, judges of state supreme courts, numerous state and national legislators, and many other luminaries.²¹

The Litchfield School provided a useful model for those interested in more legal training but not in a college education of which law training was only a part. Several private schools were established following the Litchfield model. Although Litchfield alone of the private law schools reached a position of prominence, schools of its genre helped bridge the gap between early university attempts to teach law and the next development of legal education: the university-related law school.

In order to place the rise of the university law school in historical perspective, it is essential to examine the changing requirements for admission to the bar during this early period and their effects on the apprenticeship system, on the private law school, and on legal education in general.

3. *Bar admission requirements: Riding the roller coaster*

It is beyond the scope of this Section providing an overview of the history of legal education to even approximate a full discussion of the diverse requirements for admission to practice among the states. It is possible, however, to note some general trends.

In spite of early movements in some colonies to prohibit the practice of law, bar associations and standards of admission to practice seem to have been well established.²² These bar organizations exercised a great deal of control, not only over legal education, but also over admission to practice. As Chroust notes:

By insisting upon the observation and enforcement of certain minimum standards, the bar to a large extent controlled the profession, including the admission to the study of law and to active practice. This control of admission [in Massachusetts]

20. *Id.* at 213 n.169 (quoting *THE LITCHFIELD LAW SCHOOL, 1783-1833*, at 4-5 (1900)).

21. *Id.* at 214.

22. A. BLAUSTEIN & C. PORTER, *THE AMERICAN LAWYER* 287 (1954).

was exercised by means of an examination before a committee of the bar.²³

Standards set by the Bar of New Hampshire are typical of bar admission requirements during this period:

No person shall be . . . recommended for admission to practice unless he sustains a good moral character . . . [N]o county society shall recommend any candidate for admission to practice, until they have ascertained by their said committee of examination, that such candidate has made suitable proficiency in the knowledge of the law.²⁴

Bar associations, through standards of admission, sanctioned and encouraged the apprenticeship system. Although allowance was sometimes made for applicants to the bar who had college education or had studied law at a private law school, in almost all instances a long period of training under a preceptor in a law office was required. Referring again to the example of New Hampshire, in addition to the demonstration of "good moral character" and the passing of an examination, the candidate had to be an apprentice for three years if he had a liberal arts degree and five years if he had no degree. Some states required up to seven years of education prior to admission.

During this period the bar associations maintained rigid control not only over entry into the profession but in many instances over access to legal education as well. Since legal education was gained by an apprenticeship in a law office, bar rules regulating the number of students a practitioner could take on directly affected access to the profession. In Massachusetts lawyers were long prohibited from taking any students into their offices who had not received the recommendation of an examining board and been approved by the whole bar.²⁵

Thus, until the early years of the 19th century, bar associations enjoyed a singular degree of influence over training for and admission to the legal profession. Political events that began to transpire in the 1820's, however, dramatically changed bar admission requirements and legal education generally. Bar associations were suddenly propelled over the peak of their influence and experienced the roller coaster effect of careening into a trough of inefficacy.

The political phenomenon that cut such a wide swath

23. 2 A. CHROUST, *supra* note 2, at 131.

24. *Id.* at 141.

25. *Id.* at 134.

through established bar admission requirements, and that had a concomitant effect on the methods of legal education at that time, was the egalitarian philosophy of Jacksonian democracy. Following Andrew Jackson's election to the Presidency in 1828, a powerful and sweeping reaction against any form of elitism permeated all of American society.²⁶ Supporters of Jackson were confidently optimistic about their charge to sweep clean the repositories of the nation's power. George Bancroft, one Jackson enthusiast, proclaimed that "[i]t is now for the yeomanry and the mechanics to march at the head of civilization. The merchants and the lawyers, that is, the moneyed interest broke up feudalism. The day for the multitude has now dawned."²⁷ Another supporter declared triumphantly that "[a]ll classes, each in turn, have possessed the government; and the time has come for all predominance of class to end; for Man, the People to Rule."²⁸ For Jackson, there was only one "whole body, the sovereign people, beset with aristocratic sores."²⁹

Naturally the so-called "aristocrats" were not Jackson enthusiasts; and according to de Tocqueville, lawyers formed the semi-invisible but powerful political aristocracy of that day.³⁰ Thus, a pronounced dichotomy of feeling existed among those listening on the day of Jackson's inauguration. Amos Kendall, a Kentucky journalist, voiced the popular opinion that "[i]t was a proud day for the people. General Jackson is *their own* president."³¹ Justice Story, however, pronounced the conclusion shared by many of his associates on the bench and in the bar that "[t]he reign of King 'Mob' seemed triumphant."³²

Government institutions at every level absorbed and effec-

26. Jackson tapped a portion of the "Jeffersonian myth" in his euphoric description of the purpose of his administration:

[T]o heal the wounds of the Constitution and preserve it from further violation; to persuade my countrymen, so far as I may, that it is not in a splendid government supported by powerful monopolies and aristocratical establishments that they will find happiness of their liberties protection, but in a plain system, void of pomp, protecting all and granting favors to none, dispensing its blessings, like the dews of Heaven, unseen and unfelt save in the freshness and beauty they contribute to produce.

A. SCHLESINGER, *THE AGE OF JACKSON* 511 (1945).

27. *Id.* at 319 (quoting a letter from George Bancroft to H.F. Brownson (Sept. 21, 1836)).

28. Brownson, *Tendency of Modern Civilization*, 1 B.Q. REV. 237 (1838).

29. M. MEYERS, *THE JACKSONIAN PERSUASION* 18 (1969).

30. 1 A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 348-58 (6th ed. Boston 1876) (1st ed. Paris 1835-1840).

31. *Quoted in* A. SCHLESINGER, *supra* note 26, at 6.

32. 1 *LIFE AND LETTERS OF JOSEPH STORY* 563 (W. Story ed. 1851).

tuated the egalitarian philosophy of the Jacksonian era. In the late 1820's and early 1830's state legislatures began to reassert their long dormant authority that had as a matter of course been delegated to the bar associations, and "purged" the profession of its tight control of legal education and standards for admission to the bar. The result was a nobly motivated but questionable equalization of "standards" to practice law. Nearly anyone of "good moral character," regardless of his knowledge of the law—or lack thereof—was permitted to enter practice.

Describing this movement that severely eroded the need to study law systematically in order to prepare to meet what once were strict admission standards, Theodore W. Dwight, Dean of Columbia Law School in 1889, related: "Examinations for admission to the bar were held by committees appointed by the courts, who, where they inquired at all, sought for the most part to ascertain the knowledge of the candidate of petty details of practice. In general, the examinations were purely perfunctory."³³ The following is an example of what appears to be the typical rigorous bar examination:

In California two "law students" who clerked in the same building, had applied for admission to the bar. One day a member of the Supreme Court of California called upon one of the students and announced that he had come to ascertain his professional qualifications. The whole examination consisted in the question: "Is the Legal Tender Act constitutional?" The student replied: "It is!" Whereupon the judge observed: "I have just examined your friend in the other office and he says that the Act is unconstitutional, but we need lawyers who are able to answer great constitutional questions so quickly, right or wrong. You are both admitted."³⁴

During this era of relaxed standards for admission to practice, the apprenticeship system continued to be the most common method for training future lawyers, when such training was sought at all. The importance of the apprenticeship system, however, was beginning to decline noticeably. With little incentive to prepare themselves in a lawyer's office to pass a bar examination, and with an awareness of the exploitation inherent in much of the apprenticeship system, those desiring to become lawyers had

33. Dwight, *Columbia College Law School, New York*, 1 GREEN BAG 141 (1889). The reader should be aware of one caveat: much of the literature of this time was written by academic legal educators, such as Dwight, who were undisguised in their disdain for the apprenticeship system.

34. Smith, *Admission to the Bar in New York*, 16 YALE L.J. 519 (1907).

much less reason to enter law offices as apprentices. Nor did the incentive exist to study at a private law school as a preface to apprenticeship training. Further, state legislatures that had greatly simplified the bar examination also eliminated or minimized the necessity of apprenticeship: by the 1860's only nine of thirty-nine states had a formal apprenticeship requirement, and even in those states the length of the apprenticeship was reduced. The apprenticeship system and the private law school were thus dealt crippling blows by the force of Jacksonian democracy.

4. *The beginnings of university-based legal education*

Out of the ashes that Jacksonianism had made of bar admission requirements and legal education generally arose the university-related law school. Although the educational objectives set by academicians were not to come to fruition until the latter part of the 19th and early part of the 20th centuries, conscious efforts in this direction were undertaken by some universities at the same time that Jacksonian democracy was having its leveling effect on the bar.

The apprenticeship system had long been unacceptable to its opponents because of its often inefficient and cursory nature. The system not only generally failed to provide a systematic program of study, but the education it did afford was by no means uniform among practitioners, thereby not establishing a common basis for those entering the bar.³⁵

The private law school helped alleviate the problem of unsystematized formal legal education and thus, in principle, was more acceptable to those favoring university-administered legal education than the apprenticeship system. However, the private school was still practically, not theoretically, oriented, and could not confer an academic degree. As the importance of formal education recognized by a degree increased, the private law school lost some appeal. The idea grew that by affiliating with a college the private law schools would not only be able to confer a degree, but also would gain increased respectability as a part of a university.

This affiliation was beneficial to colleges and satisfactory to academicians. Colleges had attempted to teach law, but their efforts were largely unsuccessful because the teaching generally reflected a broadly theoretical and philosophical approach with

35. This last problem, lack of standardization of legal education, has been a point of contention among members of the bar, legal educators, and others since the founding of the first law school and is still an issue today.

a closed eye toward training the practitioner. By absorbing a private law school, the college would have the advantage and prestige of a professional school while the bar would reap the benefits of a degree-conferring institution. This seemed to be a solution both for academicians (and some members of the bar) who felt that lawyers should be more generally educated and for those members of the bar who felt the need for the practitioner's guidance over the education of prospective lawyers. Perhaps the adoption of private law schools was not necessarily planned at the outset to accomplish these objectives,³⁶ but the fact that a compromise was struck that favored the development of the academic model of legal education cannot be denied.

It was in the midst of the confusion about legal education created by the egalitarian principles of the day that the beginnings of the university-based law school became firmly established. After its founding in 1817 through the efforts of Judge Parker, the Harvard Law School became much more firmly grounded in 1829 when it was reorganized and Joseph Story and John Ashmun joined the faculty. Story emphasized an academic and a systematic approach to legal education that was contrary to those forces of Jacksonian democracy he weathered while continuing to sit on the U.S. Supreme Court during Jackson's tenure. Ashmun had been closely associated with a private law school at Northampton, Massachusetts and brought to Harvard the expertise of running a school. He also brought some tuition-paying students with him—a matter of no little concern to any college president.

The Yale Law School was established initially by the outright adoption of a private law school. The adoption was accomplished by appointing the owner of the school, David Duggett, to a professorship of law and including the names of his students in the Yale catalogue of students.³⁷

Henry Wade Rogers, Dean of the Department of Law at the University of Michigan at the end of the 19th century, retrospectively viewed the founding of his law school in 1837 in terms that accurately describe the feelings of academicians in that day about legal education:

36. The union of a college and private law school was often a casual affair. As Reed notes in the cases of Harvard and Yale: "They merely attached more or less loosely . . . professional departments controlled by practitioners." A. REED, *supra* note 15, at 45. At Princeton, however, the attempted union was so structured and stultifying that aspirations for affiliation went unrealized.

37. Stevens, *supra* note 16, at 415.

[T]he wisdom of the people of Michigan in establishing a law school is seen when we reflect that they discarded the old notion that the place to learn law is in a lawyer's office, rather than in a University. A law school was established because it was thought that there the law could best be learned.³⁸

In 1837, the statement that university-based legal education was the best method and would become the primary mode of training future lawyers would have been premature. Dean Rogers had the substantial benefit of hindsight. By 1850 there were only fifteen university law schools, by 1860 only twenty-one, and by 1870, the date conceded by many to be the beginning of the modern law school, there were still only thirty-one universities that had law schools affiliated with them.³⁹ Even after 1870, the forceful personality and educational innovations of Dean Langdell of Harvard, as well as more favorable political and economic circumstances, would be required to ensure the eventual prevalence of the university law school.

C. *Legal Education After 1870: The Triumph of University-Based Education*

1. *The transition period: Moving toward the Harvard model*

The breaking point between legal education dominated by the apprenticeship system and the modern law school came in 1870 with the appointment of Christopher Columbus Langdell as Dean of the Harvard Law School. As we have noted in an earlier work, the Harvard Law School "provided the model and impetus for legal education"⁴⁰ for the next forty years or so. At a time when educational standards were lax and it was still common to gain a legal education by working in a lawyer's office, Harvard began the trend toward academically based legal education.⁴¹

38. Rogers, *Law School of the University of Michigan*, 1 GREEN BAG 190 (1889).

39. A. BLAUSTEIN & C. PORTER, *supra* note 22, at 165.

Some of the schools were in operation only a few years; others gave intermittent instruction before achieving permanent status; some, like those at Columbia University and the University of Pennsylvania, grew on the foundations of the old chairs of law which had since ceased to exist. Instruction was "little more than an expanded form of office apprenticeship training."

Id. at 165-66.

40. E. GEE & D. JACKSON, *FOLLOWING THE LEADER?: THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA* 4 (1975).

41. Of course, as will be discussed later, there were other economic and political factors, as well as forces within the bar itself, that also encouraged this academic trend; but Harvard was the first institution to focus attention on university-based legal education by systematically pressing for higher standards and more theoretical instruction.

The case method of instruction in law schools is Langdell's principal academic legacy. While studying cases can hardly be said to be revolutionary, the notion of grouping cases together in a book devoted to a particular area of the law was a great innovation at the time. Once established, the casebook method became the predominant pedagogical tool of law teachers. There have been notable attempts to break away from the casebook method, but even today it remains the almost universal method of instruction during the first year of law school and in many, if not most, second- and third-year courses.

Langdell felt that three years in professional school were needed for a sufficient legal education and promptly instituted such an academic program at Harvard Law School. At the time, however, law school education was viewed as a luxury, not a necessity, for admission to the bar, and the length of legal education in almost all schools rarely exceeded two years. The three-year law degree was a pioneering notion. The ABA debated on and off for more than forty years before it could recommend a three-year degree or the equivalent as a prerequisite for admission to the bar.

The last precedent established by Langdell at Harvard was the requirement of a bachelor's degree for admission to law school. This requirement was even further ahead of its time than the three-year degree. Time once again proved Langdell's prescience, and, while the struggle to upgrade prelegal education requirements is still going on in some respects, almost all ABA-accredited law schools today require an undergraduate degree before a student may be admitted.

It is important to note that while Harvard established the pattern for most of the better known and prestigious law schools, it would be wide of the mark to conclude that all law schools have been cast in its mold. As Reed pointed out, there were different types of law schools competing for students.⁴² Some law schools continued to be proprietary institutions, unrelated to universities. Such schools took a more practical approach to legal education. Some schools had minimal standards (if any) for admission and took just about anyone who requested admission. The largest group consisted of part-time evening law schools. Evening schools provided a means of upward mobility for many persons by reducing the expense and difficulty of full-time instruction, thus broadening entry into the legal profession.

42. A. REED, *supra* note 15, at 414-16.

2. *The American Bar Association and the Association of American Law Schools*

Although the effects of Jacksonian democracy on legal education waned after the Civil War and the number of university law schools that emphasized academic legal education steadily increased, thoughtful members of the bar still believed that the system of legal education did not adequately train future lawyers for practice. Warren A. Seavey describes this period:

As the century came to its last quarter, the examinations were still of the slightest; there were no state bar examiners; the schools were still generally without admission requirements; the residence requirements were generally one year, a few only requiring as much as two years. The training itself was of the narrowest sort, definitely directed towards the acquisition of legal rules without thought as to their background and still mostly given by part time teachers to part time students, most of whom were not much more than high school age. The courses were not organized in progression but were offered for all students alike, the beginners with the more advanced. . . . Although there was still some dignity attached to the office of counselor, particularly in the minds of the attorneys themselves, by and large the profession consisted of men seeking only a livelihood and the schools were merely trade schools.⁴³

Some members of the bar who felt that progress in improving legal education and standards for admission to the bar was insufficient became involved in revitalizing bar associations that had atrophied during the age of Jackson, or began organizing new ones. The first of these local bar associations was formed in New York City in 1870, and was followed by fifteen other state, city, and county bar associations in the succeeding eight years.⁴⁴ By 1878 enough interest had been generated in a national organization for lawyers that the American Bar Association was founded with the avowed purpose to "advance the science of jurisprudence, promote the administration of justice and the uniformity of legislation throughout the Union, uphold the honor of the profession of law and encourage cordial intercourse among the members of the American Bar."⁴⁵

Although only a handful of American lawyers were members

43. Seavey, *The Association of American Law Schools in Retrospect*, 3 J. LEGAL EDUC. 154 (1950).

44. *Id.* at 154-55.

45. *Quoted in id.* at 155.

of the ABA in its early years, the organization undauntedly proceeded to discuss matters pertaining to the profession as if its members had received a mandate from their peers to do so. One of the first four standing committees established by the ABA was the Committee on Legal Education, later the Section on Legal Education.⁴⁶

It is significant to note that the great majority of committee members were schoolmen.⁴⁷ Almost immediately the committee began to promulgate resolutions directed toward shaping legal education and bar admission requirements in a manner consistent with members' notions of the level of education needed by the bar.

In one of its first proposed resolutions the committee urged the state and local bar associations "to recommend and further in such law schools the requirement of attendance . . . for . . . three years, as a qualification for examination to be admitted to the bar."⁴⁸ Another resolution proposed at this same meeting was that state and local bars recommend to their respective states that, where needed, law schools should be established and main-

46. As the ABA is organized today, a "Section" is a subgroup that deals with substantive legal subjects while a "Committee" is a select organization that has a specific operational function. If the nomenclature of today were used, what was originally termed the "Committee on Legal Education" would more properly have been called the "Section on Legal Education" because it dealt only with the general topic area of legal education and was not assigned specific functional tasks. In 1893 the name of the Committee was changed to become a Section, and the administrative officers came to be known as the Council of the Section on Legal Education. When the ABA began to "accredit" law schools by publishing its list of approved schools in 1923, the name of the Section, whose function had changed from the general discussion about legal education to the task of accreditation, by rights should have been changed back to the "Committee on Legal Education." For a discussion of the beginnings of accreditation by the ABA, see M. CARDOZO, *THE ASSOCIATION PROCESS 1963-1973*, at 39-44 (1975) (AALS 1975 Annual Meeting Proceedings, Part One, Section II).

The choice of the name for an ABA subgroup had important implications for the organization of that group and possibly for the outcome of resolutions discussed. The members of a Committee were appointed by the President of the ABA; officers of a Section were elected by the Section's membership. Perhaps more importantly, all that was required to become a voting member of the Section was to pay dues and attend the Section meeting at which the vote was taken. Thus, there were examples of different factions competing with one another, recruiting their supporters to attend the annual section meeting to vote for resolutions each faction favored. For a description of the desperate attempt by proprietary schools to wrest control of the Section on Legal Education from the academic schoolmen at the 1929 meeting in Memphis, see Seavey, *supra* note 43, at 166. Today such attempts to pack a meeting of an ABA Section are prevented by a minimum time membership requirement as a prerequisite to voting privileges.

47. For the list of the prestigious academicians forming this committee, see Seavey, *supra* note 43, at 155.

48. Committee on Legal Education and Admissions to the Bar, *Report*, 2 A.B.A. REP. 209, 236 (1879).

tained, by public authority if necessary, and that such law schools be "provided with faculties of at least four well-paid and efficient teachers."⁴⁹ The committee also proposed a three-year general curriculum consisting of:

- I. Moral and Political Philosophy.
- II. The Elementary and Constitutional Principles of the Municipal Law of England; and herein:
 - 1st. Of the Feudal Law;
 - 2nd. The Institutes of Municipal Law generally;
 - 3rd. The origin and progress of the common Law.
- III. The Law of Real Rights and Real Remedies.
- IV. The Law of Personal Rights and Personal Remedies.
- V. The Law of Equity.
- VI. The Lex Mercatoria.
- VII. The Law of Crimes and their Punishments.
- VIII. The Law of Nations.
- IX. The Admiralty and Maritime Law.
- X. The Civil or Roman Law.
- XI. The Constitution and Laws of the United States of America, and herein of the jurisdiction and practice of the Courts of the United States.
- XII. Comparative Jurisprudence, and the Constitution and Laws of the several States of the Union.
- XIII. Political Economy.⁵⁰

No action was taken on these proposed resolutions until the next year. During the 1880 session, the resolutions were proposed to the entire bar association and were met with the fate typical of controversial recommendations: they were sent back to the committee for further study. Although those favoring looser standards in pursuit of a more "democratic" access to the bar prevailed, the debate over the resolutions is instructive in that it illustrates the feelings of at least some of the early leaders of the bar relative to legal education.⁵¹

At the onset of the debate on the resolutions it was strongly urged that the ABA ought to go on record, "decidedly and unmistakably, in favor of elevating the standard of legal education, of ultimately bringing about the result that a regular education at a proper school of law shall be one of the requisites of admission

49. *Id.* at 235.

50. *Id.* at 235-36.

51. The apparition of Jacksonian democracy, though assumed dead, arose again as "friends of democracy were shocked at the thought of an intellectual aristocracy" that would be encouraged by such proposals. Seavey, *supra* note 43, at 156.

to the bar in all the states."⁵² It was recognized that many of the great lawyers and judges of the time had not seen a law school, but it was also noted that because the law was growing more complex, "a higher education is imperatively demanded than was requisite in former years."⁵³ While there seemed to be a consensus as to the need for a more educated bar, the principal contentions against a mandatory three-year degree were that to impose such a requirement would prevent members of the poorer classes from entering into the legal profession and that three years was unnecessarily long.

During the remainder of the 1880's, no specific recommendations advocating changes in educational standards were proposed by the committee. The final decade of the 19th century, however, was marked by strong statements about some of the problems facing legal education in relation to the bar. Once again resolutions were proposed in an attempt to raise educational and bar admission standards. In 1891 the committee urged adoption by the ABA of a resolution stipulating a minimum of three years attendance at law school as a bar admission requirement. The three-year degree requirement was to apply only to the "older States having a more settled and comprehensive jurisprudence of their own."⁵⁴ The argument for the proposition was that it would take an extra year to learn the greater amount of law in the older and larger states. It was counterargued that such a requirement would be unfair to prospective lawyers in larger states. The latter argument prevailed, and the academicians once again suffered a temporary setback.

One year previous to this latest debate on the three-year law school requirement the committee issued a prepared statement that foreshadowed both the ultimate triumph of academically based legal education and modern efforts to resurrect within the university framework some of the benefits of the apprenticeship system through clinical education programs.⁵⁵ The committee noted that although the number of law schools had increased significantly and academic legal education would replace the traditional apprenticeship form of training, law schools were capable

52. American Bar Association, *Proceedings of the Third Annual Meeting*, 3 A.B.A. REP. 5, 31 (1880).

53. *Id.*

54. American Bar Association, *Transactions of the Fifteenth Annual Meeting*, 15 A.B.A. REP. 3, 9 (1892).

55. For a discussion of such clinical programs now in operation or in the process of development, see Section VI, notes 172-227 and accompanying text *infra*.

of "almost indefinite improvement" and that perhaps "peculiar advantages in the older method of office instruction [had been] lost sight of."⁵⁶ The committee concluded that many problems in legal education existed "because there was no unity of action among the different schools and no effective oversight on the part of the bar or bench." Further, this "want of a proper standard of true legal education and a definite plan of the entire course [might be remedied if] such . . . an association like this . . . would but take the pains to give the subject their earnest consideration for a year or two."⁵⁷

Although little was done immediately, an atmosphere conducive to action persisted for some years. In 1899 Henry Wade Rogers submitted a resolution to the Section on Legal Education (renamed from the committee in 1893) specifying that a committee should be appointed "to bring the reputable law schools into closer relation with each other and with the Section . . . and to invite such schools to meet in a conference with the Section the next year."⁵⁸ As a result of this resolution, the following year a meeting of delegates from thirty-five schools ended in the establishment of the Association of American Law Schools.⁵⁹

During its first meeting, the AALS adopted standards for the new organization stipulating that each member

shall require of candidates for its degree a completion of a high school course of study, or its equivalent, [and that] the course of study leading to a degree shall cover at least two years of thirty weeks per year, with an average of at least 10 hours re-

56. Standing Committee on Legal Education, *Report*, 13 A.B.A. REP. 327, 329 (1890).

57. *Id.* at 329-30.

58. *Quoted in Seavey, supra* note 43, at 157.

59. The initiative for the creation of the Association of American Law Schools thus came from the ABA through its Section on Legal Education. Although the first members of the AALS may not have specifically thought of themselves as such, they formed a kind of accrediting agency by setting standards to be observed by law schools for admission to their organization at a time when the ABA was twenty years away from such activity. For the next fourteen years the AALS functioned independently but still under the shadow of the ABA because meetings for the two organizations were held concurrently and discussions about the bar superseded concern about specific improvements in legal education and standards for law schools. Beginning in 1914, however, the AALS began to hold meetings separate from the ABA and to establish itself as a more recognizable force in shaping legal education. *Id.* at 159-60. Although through most of their joint histories, the AALS and the ABA have in some respects competed in certain activities pursued by both organizations, particularly the accreditation process, recent years have witnessed a closer cooperation and correlation of efforts. It is possible the two organizations are moving toward the procedure adopted by the medical profession when the American Medical Association and the Association of American Medical Schools established a joint committee on accreditation.

quired class-room work each week for each student: provided, that after the year 1905 members of this Association shall require a three years course.⁶⁰

The AALS recommendation of a three-year law curriculum was reminiscent of the similar proposal by the ABA Committee on Legal Education that had been suggested a decade before. Member schools who did not meet the three-year requirement by 1906 were ejected from the organization.

Further efforts by the AALS over the next fifteen years to raise the standards of legal education by increasing requirements for admission to the organization resulted in measurable progress: libraries grew to meet a larger minimum volume level; the faculty-student ratio of member schools improved; the publication of scholarly works including essays on Anglo-American Legal History, the Continental Legal History Series, and the Modern Legal Philosophy Series was encouraged; and round tables were established. The number of university-based law schools was steadily increasing, and, whereas in 1900 fifty percent of American law schools required only a two-year course of study, by 1915 eighty-three percent mandated a three-year law curriculum.⁶¹ Although by 1917 thirty-six out of forty-nine jurisdictions still required a period of apprenticeship, it was ordinarily possible to substitute instruction at a law school. However, the objective of the schoolmen—compulsory attendance at law school—remained an elusive goal:

Even in 1917 . . . no jurisdiction made it compulsory for the aspiring lawyer to attend law school. The law schools had, in some jurisdictions, to compete against the method of being admitted to the bar after apprenticeship; in others, against admission after passing the bar exams without any requirement of a formal training period. Hence it was at this point in the history of legal education that the profession sought to upgrade the law schools and to make attendance at them compulsory.⁶²

After another period of relative inactivity, the Council of the Section on Legal Education of the ABA, dominated by schoolmen and acting with the encouragement of the AALS, swung back into action. The academicians envisioned a comprehensive review of

60. Quoted in M. CARDOZO, *supra* note 46, at 39.

61. Seavey, *supra* note 43, at 159-60.

62. Stevens, *Legal Education: Historical Perspectives*, in CLINICAL EDUCATION FOR THE LAW STUDENT 43, 47 (1973) (working papers prepared for the Council on Legal Education for Professional Responsibility National Conference, Buck Hill Falls, Pennsylvania).

legal education sponsored by the prestigious Carnegie Foundation, similar to the influential Flexner report on medical colleges also backed by the Foundation, that would recommend the upgrading of standards of legal education and admission to the bar and would repose responsibility for legal education in the university law school. The schoolmen hoped that a review of this nature would severely weaken the competition law schools still endured from the apprenticeship system by inducing state legislatures to base bar admission requirements on attendance at law school. The Carnegie Foundation agreed to sponsor a study, and A.Z. Reed was engaged to undertake the project.

The leaders of this attempt to outflank the apprenticeship system were taken by surprise by the publication of Reed's final report in 1921. Reed, unlike Flexner in his report on the medical profession, did not recommend the unification of methods and standards for legal education. Rather, Reed favored the retention of the apprenticeship system as one of several avenues by which an aspirant could be admitted to the practice of law.

Undeterred, the schoolmen sought and found views more harmonious with their own in the report of an ABA committee headed by Elihu Root,⁶³ which was adopted by the ABA in the same year the Reed report was published. The Root committee report supported minimum lengths of time for undergraduate and legal studies, adequate library facilities, sufficient full-time faculty, and bar examinations, and recommended the publication of lists of law schools that did and did not comply with such standards.⁶⁴

63. It is interesting that, in response to the Reed report, the ABA appointed Root, a highly respected member of the bar and former ABA President, U.S. Senator, and Secretary of State, who, although in his seventies, was held in sufficient repute by his colleagues so as to ensure that the proper weight would be accorded his committee's conclusions. When Root moved for the adoption of his committee's report in a general ABA meeting, the motion received additional impetus when seconded by William Howard Taft, then Chief Justice of the United States.

64. The resolution proposed by the Root Committee to the ABA's 1921 meeting is reprinted here in full:

Resolved, (1) The American Bar Association is of the opinion that every candidate for admission to the Bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

The results of the ABA's renewed efforts to revise educational standards, like those that came from AALS actions, were impressive. Referring to the first publication in 1923 of the ABA's list of "approved" law schools, Blaustein and Porter comment:

It contained the names of thirty-nine schools then complying with all the association's standards and nine additional schools which were expected to comply in the near future. It is significant to note that, of the thirty-nine approved institutions, twenty-seven had not been complying when the standards were adopted a scant two years before.⁶⁵

The AALS in succeeding years continued to raise standards for the number of instructors, the size of the law library, and the amount of undergraduate education prefacing law study, with the ABA generally following suit. Both the AALS and the ABA realized that inspections of law schools were necessary to insure compliance with membership requirements, as well as to assist schools with specific problems. Accordingly, the ABA in 1927 began sending representatives to make such personal inspection visits.⁶⁶

The adoption of the Root committee proposal placed the ABA's stamp of approval on yet another Langdellian legacy: the notion that a legal education ought to be an extension of under-

(c) It shall provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

(2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

(3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not and to make such publications available so far as possible to intending law students.

(4) The president of the Association and the Council on Legal Education and Admissions to the Bar are directed to cooperate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the Bar.

(5) The Council of Legal Education and Admissions to the Bar is directed to call a conference on legal education in the name of the American Bar Association, to which the state and local associations shall be invited to send delegates for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

Quoted in A. BLAUSTEIN & C. PORTER, *supra* note 22, at 183.

65. *Id.* at 184.

66. *Id.*

graduate instruction. As noted above, Harvard under Langdell's urging adopted the requirement that entering law students must have a bachelor's degree. The AALS also accepted Root's recommendation and amended its articles so that member schools had to require by 1925 two years of college study as a prerequisite to law school admission.⁶⁷

Because of great resistance by the bar, however, the movement toward approval of an undergraduate degree requirement was very slow in coming. The forward-looking Root resolution only made provision for "at least two years study in college." Even today three years of college work is the minimum prerequisite for legal study under requirements for member schools of the AALS. ABA standards regarding undergraduate education for accredited schools are substantially the same as the AALS requirements. The fact that most law schools today require a B.A. degree or its equivalent for admission reflects the individual initiative of the schools themselves.

It is apparent from the above discussion that efforts by the ABA and the AALS to improve the standards of legal education have been mostly quantitative in nature. It has been the general feeling of these organizations that if certain minimum levels could be assured—the number of faculty, size of the library, length of undergraduate and legal studies—the prospective lawyer would receive an adequate education. Quantitative standards are also relatively easy to institute and evaluate. The next major step the ABA and the AALS will most likely make in their quest to improve legal education will be in the development and encouragement of qualitative standards, a trend that is only now in its infancy.⁶⁸

3. *Admission to the bar*

Although the American legal profession for much of its history has been, for all practical purposes, autonomous in determining bar admission requirements, the ultimate authority for doing so has always rested in the state legislatures. Beginning with the second quarter of the 19th century, as lawmakers responded to the influences of Jacksonian democracy by wiping out virtually all restrictive standards for admission to the bar, legislatures assumed a more active roll in such matters. During the last quarter of the century, coincident with the faltering of the ap-

67. *Id.* at 183.

68. *Id.* at 181.

prenticeship system and the development of the university-related law school, state legislatures began to awaken once again to their responsibility to ensure a more careful scrutiny of applicants for admission to practice. The first state board of bar examiners was established in New Hampshire in 1872. Since that time other states have followed the lead, and presently all states have some legislatively established machinery to set bar admission requirements.

During the years in which they were most active in raising membership requirements in their own organizations, the ABA and AALS served only as advisory bodies on legal education and bar admission requirements. If the standards which they had established for their own members were to be enforced on all schools that educated future lawyers, the state legislatures had to be persuaded to join the ranks. The first step in this process was to unify the state bar associations and mobilize powerful lawyers in each state behind the cause. As Seavey relates:

[T]he astute lawyers who fathered the meeting [to adopt the Root proposal] did not let the matter rest there. Although the Bar Association was not now the small social group with which it began, it still included only 10 percent of the country's lawyers. Something more than its approval was essential for success. The influential lawyers of each state must be reached. The same group which won success with the Bar Association [about the Root proposal] arranged for a conference to be held in Washington in the spring of 1922. To this were invited representatives from all the State Bar Associations. To this conference was brought an overpowering array of important members of the legal profession, including Elihu Root (who had been the Chairman of the Section on Legal Education and the prime mover), Chief Justice Taft, Silas Strong, William G. McAdoo, John W. Davis, President Severance of the American Bar Association, George Wharton Pepper, and a number of very prominent ex-Governors and Senators. With this leadership and with oratory of a high order, the conference members were easily persuaded and returned to their homes prepared to do what the law teachers [of the AALS] had tried in vain to accomplish. Reform was off to a good start.⁶⁹

The legislatures were not long in following suit. By 1931 seventeen states required two years of college study for admission to law school, and thirty-three states required a three-year law cur-

69. Seavey, *supra* note 43, at 162-63.

riculum. By 1939 the two-year prelegal college study standard had been adopted by forty-one states.⁷⁰ The reason for this dramatic upgrading in standards has been attributed alternatively to the influence of the ABA and AALS, as described above, to "anti-immigrant, anti-urban, and anti-semitic feelings" merging in an attempt to keep certain classes of people from practicing law, and to the economic depression of the 1930's that caused an oversupply of lawyers that the profession and the legislatures were anxious to reduce.⁷¹ Regardless of the specific reasons, the requirement in most states that students of the law first obtain a substantial amount of college education and then attend law school had a devastating effect on that still tenacious competitor to the university law school: the apprenticeship system. If law school attendance were mandatory, what student anxious to begin practice would impose upon himself the additional burden of a period of apprenticeship? One of the few remaining barriers to the ultimate triumph and domination of academic legal education had been eliminated.

Reference to the evolution of bar admission requirements in three bellwether states—California, Iowa, and New York—demonstrates this trend of state response to leaders in legal education who have constantly pressed for the upgrading of academic standards. Examination of the data in the accompanying charts reveals two important, interrelated trends. First, prelegal and legal education requirements increased. Second, the bar examinations tended over time to become more formalized and to demand greater substantive legal knowledge. Although the bar has increasingly relied on law schools to supply its future members, it maintains a significant influence on law school curriculum by dictating the substance of the bar examination. It behooves the law school in search of students to offer, and students in search of employment to take, courses covering bar examination subjects.⁷²

Today, despite a few threads of commonality,⁷³ there is still wide divergence among the various states in the specific requirements for admission to the bar. One example appears in those

70. A. BLAUSTEIN & C. PORTER, *supra* note 22, at 184.

71. Stevens, *supra* note 62, at 48.

72. See generally E. GEE & D. JACKSON, note 40 *supra*.

73. For example, in addition to the necessity in most states for some prelegal college education, applicants for admission to practice must demonstrate "good moral character." What constitutes good moral character and the means of ascertaining it, however, are understandably sources of continuing debate.

California State Bar Admission Requirements

1851 - 1976

	<u>Education</u>	<u>Practice</u>	<u>Examination</u>	<u>Apprentice- ship</u>	<u>Required Courses</u>	<u>Age, Sex, and Race</u>	<u>Other</u>
1851	None	None	Strict examination in open court by one of the Judges of the Supreme Court.	None	None	Must be 21 years of age, male, white.	Must prove good moral character.
1874	None	None	Same	None	None	Sex and race qualifications deleted.	Same
1905	None	None	Same except for students at Hastings College of Law who were admitted on the basis of their diploma.	None	None	Same	Same
1913	None	None	A number of other schools were granted diploma privilege. Diploma privilege was revoked in 1917.	None	None	Same	Same
1918	2 years of law study.	None	Strict examination in open court.	None	None	Same	Same
1919	Proof that applicant has studied law for 3 years diligently and in good faith.	None	Examinations now conducted by Board of Bar Examiners. "Examinations shall be wholly or in part written examinations."	None	Supreme Court and Board of Bar Examiners empowered to require certain courses.	Same	Same
1937	(1) 2 years of college prior to law school or have reached age 25. (2) (a) Graduation from an accredited full-time, 3-year law school, or (b) graduation from a 4-year, part-time law school, or (c) diligent and good faith study of law for at least 4 years.	None	Must pass final bar examination and any preliminary examination required by bar examiners.	None	None	Same	Good moral character. 3-month residence requirement prior to taking bar.

1953	Age alternative to prelegal study reduced to 23 years. Legal education requirements remained the same.	None	Students not attending accredited schools must pass a preliminary examination after first year in law school.	None	None	Same	Same
1976	(1) 2 years of college prior to law school or "have attained in apparent intellectual ability the equivalent of at least 2 years of college work." (2) Same as 1937 except that the 4-year good faith study of law must occur in a law school, by correspondence for 4 years, in the chambers of a judge of a court of record, or in a law office within the state.	None	Same	May satisfy 4-year legal education requirement by studying in the office of a member of the bar under his personal supervision.	None	Must be 18 years of age.	Same

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Iowa State Bar Admission Requirements

1851 - 1976

	<u>Education</u>	<u>Practice</u>	<u>Examination</u>	<u>Apprentice- ship</u>	<u>Required Courses</u>	<u>Age, Sex, and Race</u>	<u>Other</u>
1851	Must satisfy district court that applicant possesses requisite learning.	None	None	None	None	White, male. No age stated.	Good moral character.
1873	Must satisfy a court of record that applicant possesses requisite learning.	None	Diploma privilege for graduates of the Iowa State University Law Department.	None	None	Sex and race qualifications eliminated. Must be 21 years old.	Same
1889	2 years of law study in "some reputable law school in the United States."	None	Examination in open court required of all applicants except those at the Iowa State Law School.	2-year legal education requirement may be satisfied by 2 years of study in a law office.	None	Same	Same
1907	(1) Must have completed a 4-year high school course of study or have acquired an equivalent education. (2) 3 years of law school study.	None	Written and oral examination required of all applicants.	Education requirement may be satisfied by study in either a law office or with a judge.	None	Same	Same

1931	Same	None	Generally the same as 1907. Students at the State University may be examined there and admitted without further examination.	Same	None	Same	Same
1950	In addition to the 1931 requirements the applicant must have completed 2 years of college.	None	Same	Same	None	Same	Same
1971	Degree from an ABA accredited law school required as a prerequisite to taking bar examination.	Student practice rule adopted to allow certain students to appear in court.	Same	No provision for law office study.	None	Same	Same
1976	Same	Same	Students at the State University must take the bar examination with other applicants.	Same	None	Same	Same

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New York Bar Admission Requirements

1871 - 1976

	<u>Education</u>	<u>Practice</u>	<u>Examination</u>	<u>Apprentice- ship</u>	<u>Required Courses</u>	<u>Age, Sex, and Race</u>	<u>Other</u>
1871	Any recognized instruction at a university in "the science of law" will be substituted for one year of clerkship.	None	Oral examination given by N.Y. Supreme Court.	Must serve a 3-year clerkship after age 17 to be certified for bar. May substitute recognized study course for 1 year of clerkship. Must be certified as having pursued "clerkship" by an attorney with whom clerkship was served.	None	Must be 21 years of age to take exam.	Good moral character and citizen of state.
1882	Must complete college course or pass a Regent's exam in arithmetic, grammar, English composition, and American history. May attend a law school on a regular basis for one year.	None	To be given by Supreme Court or practicing attorneys appointed by court.	Must serve a 3-year clerkship after age of 18. May substitute 1 year for college or university degree and 1 year for law study at recognized school, but in no event can any applicant be admitted to bar without serving 1-year clerkship.	None	Same	Same
1911	May attend a law school and complete the "prescribed course of study."	None	Exam may be taken after completing clerkship or graduating from law school. The exam may be oral or written.	Must have studied law for 4 years with an attorney prior to taking exam if not a graduate of a college or university, and 3 years if a college graduate. Must pass an examination prior to clerkship.	None	Cannot study with an attorney until reaching 18 years of age or take exam unless of "full age."	Must successfully pass an exam in ethics and be of "good moral character." Must be a resident of the state when exam is taken.

1921	May attend a N.Y. approved law school for a 3-year course of study upon graduation from college or university or may complete 4 years of law school after 2 years of college.	None	Same	Same	None	Same	Same
1935	Must complete 2 years of prelegal study before law school or successfully pass a Regent's examination on English composition, American government, political history, economics, logic, and psychology. Must graduate from "approved" law school or pursue apprenticeship program.	None	Written exam on relevant law topics.	Same	None	18 years of age before commencing law study. "Full age" before taking bar exam.	Same
1946	Same, except "approved law schools" are defined as schools with a "three-year course of instruction" or a 4-year program.	None	Same	Same	None	Same	Proof of good moral character.

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	<u>Education</u>	<u>Practice</u>	<u>Examination</u>	<u>Apprentice- ship</u>	<u>Required Courses</u>	<u>Age, Sex and Race</u>	<u>Other</u>
1963	Applicant for exam must have completed 3 years of prelegal study at accredited institution or its equivalent. Law school study must meet rules of N.Y. Court of Appeals and be approved by ABA, AALS, or N.Y. State Education Department.	None	Written exam on both adjective and substantive law.	May study law in law office for 4 years but must also have satisfied $\frac{3}{4}$ of requirements for B.A. at accredited institution or its equivalent. Credit for combination law school/ law office study will be granted.	None	Cannot study with an attorney or commence law school study unless 18 years of age. Must be 21 years of age when exam is taken.	Bonded bar examiners. Proof of good moral character. Must be a resident of state when exam is taken.
1976	Same	None	Same	May study in law office for 4 years, but one of those years must be spent at an approved law school as a matriculated student. Must commence study after 18 years of age.	None	Same	Same

states in which law school attendance for a specific period is not required, but the candidate must exhibit some general knowledge of the law. Customarily, applicants demonstrate their competence in the law by taking and passing a comprehensive examination. In Mississippi, Montana, South Dakota, West Virginia, and Wisconsin, however, applicants may be admitted by showing that they have successfully completed a course of study in an accredited law school within the state. This right of admission is known as diploma privilege.

Since the early part of this century there has been concern about the lack of uniformity among the states as to bar admission requirements. Of particular concern has been the lack of a uniform standard regarding the quality of bar examinations. In 1930 some of the state bar examiners met informally at an ABA meeting. Under the influence of Will Shafroth, a prime mover in the drive for uniform standards of admission, they agreed that good reasons existed for the creation of a permanent organization of bar examiners. A resolution was accordingly introduced and passed requesting the chairman of the Section on Legal Education and Admissions to the Bar to organize a conference by the next year. Thus, the National Conference of Bar Examiners was founded with Shafroth as its Secretary.

Shortly after the establishment of the conference, Shafroth emphasized the need for such an organization in an article in the *Bar Examiner* in which he pointed out that "probably of all varieties of state laws governing any one subject, there is nowhere a greater diversity than in the laws concerning the subject of admissions to the bar, including rules of court and regulations of bar examining boards."⁷⁴ Today, in spite of the push for greater standards of uniformity, a review of the rules of admission to the bar in the various states will reveal only somewhat greater uniformity in comparison to when Shafroth wrote.⁷⁵

One attempt at uniformity that seems to be gaining credibility is the Multistate Bar Examination (MBE). The MBE is an objective examination consisting of 200 questions covering contracts, criminal law, evidence, real property, and torts. The questions are based on general legal principles rather than state law. The MBE has been adopted for use in most states as a part of their regular bar examination, at least in part because of the convenience and economy of its administration.

74. Shafroth, *A Tower of Babel*, 1 B. EXAMINER 43, 43 (1931).

75. See NATIONAL CONFERENCE OF BAR EXAMINERS, RULES FOR ADMISSION TO THE BAR (1972).

4. *Part-time legal education*⁷⁶

Historically, in England as well as in America, it has been thought that to be properly trained in the law a student must be fully immersed in its study for some period of time. In England the path of entry into the profession for barristers has always been through the Inns of Court. One traditional requirement for receiving one's call to the bar was to have eaten a certain number of meals at the Inns, thus insuring full attendance during the periods of instruction. The apprenticeship system in America allowed the prospective lawyer to have constant exposure to the law through actual work experience. In both systems it was possible to earn a meager living while undergoing training.

The rise of the law school in America, however, presented a difficult problem to legal educators and the leaders of the bar who had deliberately rejected Reed's open defense of part-time legal education.⁷⁷ On the one hand they desired the student to be totally immersed in the study of law; on the other hand they recognized that such a system would deny entry into the profession to those who could not financially afford such full-time education. The growing dominance of full-time university legal education thus halted the aspirations of many would-be lawyers and forced others to seek part-time legal study. This sorting process also resulted in economic class distinctions unacceptable to many members of the bar, although it is likely that others were satisfied with this arrangement. The existence of economic disparities between full-time and part-time trained attorneys accounts at least in part for the concern over the quality of part-time legal education programs expressed by institutional representatives of prestigious university law schools and the bar.

A contributory and perhaps more important source of this concern for quality is the fact that schools offering part-time legal instruction historically have been vehicles not only for lower income groups who could not afford full-time study to enter the profession, but also for less educated persons. Since at the turn

76. For the most recent and definitive study of the subject, see the study by Charles D. Kelso. C. KELSO, *THE AALS STUDY OF PART-TIME LEGAL EDUCATION: FINAL REPORT* (1972). Professor Kelso stated that the "report is designated a 'final report' because it says all the Study Director thinks he can now usefully say." *Id.* at 2.

77. As part of his suggestion for a "two-tiered" approach to legal education—one level of schools catering to theoretical questions and legal scholars, the other level providing more basic knowledge to handle common, day-to-day problems—Reed maintained that part-time law schools could prove extremely useful in training particularly the latter type of lawyer. A. REED, *supra* note 15, at 416-18.

of the century, and for a significant period thereafter, prelegal studies requirements were minimal or nonexistent, the part-time law school, usually a proprietary school with a less rigorous curriculum, could and often did graduate less educated students. This problem has been largely alleviated, however, by the institutionalization of prelegal education requirements by the ABA and the AALS.

Part-time legal education is generally much more acceptable today than in the past, partly because of the rigors of the accreditation process and partly because the distinction between a full-time student with a part-time job and a part-time student with a full-time job is becoming harder to make. The Kelso study indicates that there has been a steady increase in the number and percentage of ABA-accredited law schools that have part-time programs, and that "the bulk of evening law students are now attending ABA approved schools."⁷⁸

D. The Swing of the Pendulum: Practical Training Revisited

Although the primary means of attaining legal education in the 18th and 19th centuries—the apprenticeship system—is now a historical relic, the current interest in clinical education and other skills training models demonstrates that in many ways legal education has come full circle. Competency training through practical experience is now seen as an important curricular innovation of many law schools. In some respects, clinical education is the progeny of the apprenticeship system. In other respects, however, the differences in the two approaches to practical legal training are striking. Many administrators of clinical education programs now insist on and secure adequate, structured supervision of student participants. Moreover, these administrators seek to structure the educative benefits that can be derived from client and case exposure, rather than relying on random practical experience. Although, as evidenced by the differences, the pendulum might not be following exactly the same arc as before, it is clearly swinging back toward the idea of practical training for today's law school students.

During the time that the English tradition of precepting in a solicitor's or barrister's office and the logical notion that to acquire "practical skills" one must receive "practical training" held complete sway in American legal education, the apprentice-

78. C. KELSO, *supra* note 76, at 3.

ship system was the unrivaled method of educating future lawyers. Further, when the only written law consisted of Blackstone, Kent, some other commentaries, and a few reported cases, it was relatively easy to feel some mastery over the entire body of the law. Thus, it was felt, the real training of a lawyer was to be gained in a law office where one could pick up the customs of local practice and learn the fundamentals of lawyering.

Increasing dissatisfaction with the unsystematized nature and variable quality of the apprenticeship system, however, as well as the growing complexity of the law and the rise of the corporation, pushed the pendulum into motion. Prospective lawyers needed more than practical exposure to law and a knowledge of statutes. They needed consistent education in legal theory and a means of analysis. Langdell's Harvard made possible and foreshadowed the institutionalization of the university-based law school. As we noted in an earlier work:

After 1870 the study of law shifted to the university, due mainly to the increased acceptance by bench, bar, and students of formal law school training as the best and easiest entry vehicle to the legal profession. To meet this more theoretical approach to the law, new methods of teaching were created, the most popular of these being the case method developed by Christopher Columbus Langdell at Harvard. The case method placed primary emphasis on the study of appellate cases, which were taught through the use of the socratic method, thus effectively reducing any desire to go outside the classroom for additional information or insight.⁷⁹

Langdell further ensured the dominance of theoretical over practical instruction at Harvard by espousing the teaching philosophy that law should *not* be taught by practitioners or "men experienced in the law" but by men experienced in "learning the law." This established a tradition, not easily broken, of emphasizing the "scientific" or theoretical approach of learning the law at the expense of practical training. The two forms of education were in fact considered mutually exclusive.

Despite powerful academic influences from many quarters, the apprenticeship system was slow in dying and did not fade without strenuous voices of dissent. In 1890 one member of the ABA in a discussion on university law schools observed that "the rapid growth and success of the law schools must not make us forget that there were also peculiar advantages in the older

79. E. GEE & D. JACKSON, *supra* note 40, at 41.

method of office instruction which should not be lost sight of if we can help it, and that these schools, like all human institutions, are susceptible of almost indefinite improvement."⁸⁰ It was Reed, however, that crystalized and coalesced arguments in favor of allowing university-based legal education and more fundamental practical training to coexist and complement one another in a two-tiered system of legal education.

Reed suggested four ways to encourage practical training within law schools: (1) faculty contact with legal practice; (2) law school courses in the practical application of the law; (3) imitation of practical activities within the law school, including moot courts, drafting of written instruments, and problem-method training in the use of judicial decisions; and (4) greater emphasis upon the concrete law of a particular jurisdiction, as distinguished from the generalized law taught by the leading schools. Although by today's standards these suggestions are hardly revolutionary, it must be remembered that Reed's ideas regarding legal education contrasted sharply with those of the deans and administrators of the major law schools of the time as well as with the ideas of those in control of educational matters in the ABA and the AALS who wanted to move as far away from practical training as possible in favor of academic education.

The deliberate rejection of Reed's suggestions regarding practical training marked the swing of the pendulum toward the extreme opposite of the position that legal education had held during the dominance of apprenticeship training. Academic law schools moved to eliminate the last vestiges of practical training from their curricula. The proprietary schools retained a greater "bread-and-butter" approach, not bowing completely to the strictly theoretical classroom education that university schools offered, but the day of the independent private law school had largely passed, and with it passed its potential to influence the path of the future of legal education.

Over the next forty years, an occasional voice was raised in the wilderness in favor of a somewhat more practical approach to legal education. One of the most prominent and vociferous was Jerome Frank, who declared that it was possible to provide some of the benefits of the apprenticeship system's practical training without jeopardizing the rigor of the academic process, and therefore that, "without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences,

80. Standing Committee on Legal Education, *supra* note 56, at 329.

the law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do."⁸¹

Although those who disagreed with the extent to which Frank would have moved the university law school into the area of practical training remained in the majority for decades, there were still a significant number of educators who apparently acquiesced at least in part to his ideas. Gradually Reed's suggestions on blending practical and theoretical training in the law school gained greater currency. Increasingly, as questions were presented to legal educators because of their expertise in certain aspects of the law, they became more involved in legal problems in their geographical areas. It slowly became more acceptable, and then customary, to use practitioners as part-time or visiting professors to teach some of the more specialized subjects, thus inevitably affording students the opportunity to gain practical insight into legal problems. An increasing number of courses with a more pragmatic orientation found their way into the standard law school curriculum, including law office management, accounting, and problems in drafting wills and trusts.⁸² Legal writing the moot court programs, which involve the training and development of research, writing, and oral advocacy skills, were adopted by some law schools, and then institutionalized by most.⁸³ Although work on law reviews is generally regarded as a more "scholarly" undertaking, the student nevertheless receives training in research and writing techniques and exposure to the tedium and hard work that often characterize the lawyer's daily existence. A growing feeling of social responsibility for the poor who could not afford legal assistance joined the increasing awareness of the need for practical training to foster the creation of legal clinics in a few schools. By 1960 fifteen such programs had been developed.⁸⁴

The decade beginning in 1960 bridged the gap between practical training and academic legal education. A significant number of commentators challenged the traditional university law school model as being too theoretical and focused attention on programs

81. Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 913 (1933).

82. For a graphic demonstration of the trend, see our earlier work, D. JACKSON & E. GEE, *BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975).

83. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 171 (1974).

84. Allison, *The Evaluation of a Clinical Legal Education Program*, 27 VAND. L. REV. 271, 272 (1974).

that attempted to give students realistic contact with clients.⁸⁵ Funding was of course needed in order to begin exploration into the possibilities of clinical education. The Ford Foundation has provided substantial financial impetus through a series of grants to different organizations, culminating in the creation of the Council on Legal Education for Professional Responsibility (CLEPR) in 1968.⁸⁶ The enthusiasm and success of undergraduate and graduate legislative internship programs has influenced legal education, and many states have passed student practice laws which allow law students, generally after their second year, to practice law to a limited extent under appropriate supervision.

During the 1970's, clinical education has come into its own. As a CLEPR survey of clinical education has stated:

There appears to be a number of cracks developing in what has heretofore been almost a uniform approach to the teaching of law by this nation's law schools. These cracks are being caused by apparent dissatisfaction among members of the bench and bar about the quality of legal services being provided the consumer. This is evidenced by the move toward mandatory continuing legal education by the bar of several states with many more considering instituting similar training programs, and the adoption by federal and state courts of rules pertaining to the educational training and special experience which a person must have to appear in their courts. One of the major ways law schools are addressing these issues is to provide increased opportunities for students to participate in clinical legal education programs and other skills training courses. What was ten years ago a small group of schools experimenting with clinical programming has now become an avalanche of opportunities for students to participate in clinical education experiences.⁸⁷

85. See, e.g., PROCEEDINGS: THE ASHEVILLE CONFERENCE OF LAW SCHOOL DEANS ON EDUCATION FOR PROFESSIONAL RESPONSIBILITY (H. Sachs ed. 1965).

86. The Ford Foundation first funded the National Council on Law Clinics (NCLC) in 1960.

NCLC provided seed money for experimental programs in clinical legal education within the law school setting. This program was expanded in 1965 under a new Ford grantee, the Council on Education in Professional Responsibility (COEPR). Although COEPR was in existence only two years it was successful in awarding 26 grants to 21 law schools. During this period, debate continued on the value and viability of clinical legal education as a component of law school curricula. Realizing the inherent reluctance on the part of law schools to venture into a new, yet unproven, area of legal education, Ford decided to make a major financial commitment to clinical legal education by establishing the Council on Legal Education for Professional Responsibility (CLEPR) in 1968.

E. GEE & D. JACKSON, *supra* note 40, at 42.

87. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION, 1975-76, at ii (1976).

From the year of CLEPR's creation to the present, a period covering only eight years, the number of clinical education programs has exploded from a modest number to over 420 separate programs in forty-nine different fields of law. Approximately ninety percent of all ABA-approved law schools currently offer a form of clinical education for credit, and of those schools eighty-two percent provide more than one such course during the academic year.⁸⁸

Perhaps the most important differences between this new movement to provide practical training for law students and the traditional apprenticeship system are in the trend's focus and source of support. Whereas the individual lawyer and his office were fundamental to the apprenticeship system, current clinical education programs are rooted solidly in the university law school. CLEPR's definition of such programs is instructive:

For the purposes of this survey "clinical" has been defined as student work with clients in which the law school participates in some way—either fieldwork supervision, classroom teaching, or both. Programs in which students are placed in prosecutors' offices, or other agencies, with no faculty supervision have not been included. Likewise, legislative and judicial internships have been classified as electives—not as clinical courses.⁸⁹

Further, instead of stemming solely from traditionalists dubious of the value of academic legal education, encouragement for the current emphasis on clinical education has often come from members of the bar and bench educated in university law schools who detect, and sometimes suffer from, the deficiencies in practical training that characterize many law school graduates of today.⁹⁰

Although clinical legal education appears to be the most significant new curricular approach presently being pursued by legal educators, other cracks in the traditional teaching modes are appearing. One need only peruse the pages of the *Journal of Legal Education* and *Learning and the Law* to see that a variety of innovative proposals designed to improve legal instruction are being discussed and implemented, including computer-based programmed teaching, simulated problem techniques, the devel-

88. *Id.* at iii-iv.

89. Letter from Berry Fisher, Program Officer, CLEPR, to the authors (Oct. 16, 1974), referring to the survey undertaken for E. GEE & D. JACKSON, note 40 *supra*.

90. See, e.g., Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973) (remarks of Chief Justice Burger on the general lack of oral advocacy skills in recently graduated lawyers).

opment of interdisciplinary and intern-extern programs, and the restructuring of curricula to focus much more on the counseling and negotiating roles of lawyers.

Some feel that the pendulum has swung too far in the direction of traditional academic legal education. However, since the preeminence of university-based law schools was attained due to the failure of the apprenticeship system to provide systematic training in a real life setting, it seems likely that the equivalent failure of university law schools to provide practical and skills training, and to respond to the expanding needs of the community, represents an overreaction to the historically demonstrated inadequacies of the apprenticeship system. The desired objective that history perhaps provides us is the capacity to steer a course between the Scylla of "practical experience" and the Charybdis of "systematic academic preparation."

SECTION IV
GOING HOME: THE EDUCATION OF THE ENGLISH LAWYER

A. Introduction

It is difficult to study the development of American law without considering its English antecedents. Although the early American colonists certainly did not pay blind homage to the English legal system,¹ aspiring lawyers were generally trained under an apprenticeship system very similar to that used in England. In a manner typical of the American way, however, English legal education methods and practices were stretched, cut, bandaged, and adapted to the new scene so that they assumed a peculiarly American character. Still, no amount of rearranging the puzzle could completely obliterate the original design. The origins of American legal education, despite obvious changes, remain rooted in English tradition, and American legal educators have often cast wistful glances at their counterparts across the sea.

For obvious reasons, anglophilia underwent a severe eclipse during and following the American Revolution and War of 1812.² Somewhat later, mistrust of lawyers during the Jacksonian period no doubt included suspicion and mistrust of English law and legal institutions traditionally associated with it.³ But just as anglophilia has not been the norm, neither have loathing, mistrust, or suspicion invariably prevailed. It is now part of American folklore that many 19th century American lawyers often learned their law from a single volume that could readily fit into a saddlebag—*Blackstone's Commentaries*, written by the first Vinerian Professor of English law at Oxford.⁴ Even today, most contemporary American lawyers can recall their law

1. See Section III, notes 1-7 and accompanying text *supra*.

2. 1 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 26-29 (1965).

3. 2 A. CHROUST, *supra* note 2, at 156; J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAWMAKERS* 277 (1950).

4. H. HANBURY, *THE VINERIAN CHAIR AND LEGAL EDUCATION* 11-20 (1958).

Hurst has commented:

In the early nineteenth century the appearance of influential treatises gave great impetus to apprenticeship and self-imposed reading, at the expense of any expansion of training in formal law schools. Most important was the edition of *Blackstone*, annotated with the American authorities by St. George Tucker, successor to Wythe as professor of law at William and Mary College. Tucker's *Blackstone* was published in 1803. *Blackstone* was already a classic tradition of the bar in the United States. Tucker's Americanization of a work which purported to put all legal knowledge in a single treatise seemed to offer the ready instrument for the apprentice or self-trained lawyer.

J. HURST, *supra* note 3, at 256-57.

school venture into legal history as an excursion into *English* legal history. Failing that recollection, memories from other law school courses of animals *ferae naturae* (foxes usually) or of the Statute of Uses, entailed estates, or the threat to thrash an enemy "were it not Assize time" evidence our ancestral debt to English law.

Law professors, bar leaders, and judges may be even more susceptible than other lawyers to occasional attacks of anglo-philia. An American Bar Association meeting in London, a sabbatical year in England, a visiting professorship at an English university, or a membership on an Anglo-American delegation to study and compare our legal institutions may instill or sustain the phenomenon. The English do up pomp and ceremony very well, and visits there can be beguiling.

At a high level of generality, our legal debt to England may take the form of special reverence for the Anglo-American tradition as one containing qualities of justice rarely, if ever, rivaled by other legal traditions. For example, in reviewing an especially outrageous invasion of personal liberty, Justice Frankfurter adopted the following language:

Regard for the requirements of the Due Process Clause "inescapably imposes on this Court an exercise of judgment upon the whole course of the proceedings [resulting in a conviction] in order to ascertain whether they offend those canons of decency and fairness which express the notion of justice of English-speaking peoples even toward those charged with the most heinous offenses."⁵

Frankfurter was cosmopolitan enough to broaden the tradition to include all English-speaking peoples, but the origins of the tradition in the "sceptered isle" are inescapable.

William Howard Taft was another notable devotee of English tradition. As Alpheus T. Mason noted in his biography of Taft, the then newly-fledged Chief Justice embarked in 1922 on a "pilgrimage" to England to "strengthen the bond between the two countries" and to study the "more efficient English court procedure."⁶ More to the point of this study, Taft held the English barrister to be the ideal advocate. Taft attributed to the barrister the qualities of an elevated, perhaps even noble, leader-

5. *Rochin v. California*, 342 U.S. 165, 169 (1952) (quoting *Malinski v. New York*, 324 U.S. 401, 416-17 (1945)). The case had involved pumping the stomach of an arrested individual in order to recover pills for use as evidence against the individual.

6. A. MASON, *WILLIAM HOWARD TAFT: CHIEF JUSTICE* 283 (1965).

ship.⁷ To illustrate this point, Mason resorted to a quotation from Matthew Arnold, which the biographer thought was consistent with Taft's perspective:

That elevation of character, that noble way of thinking and behaving, which is an eminent gift of nature to some individuals, is also often generated in whole classes of man . . . by the possession of power, by the importance and responsibility of high station, by habitual dealing with great things, by being placed above the necessity of constantly struggling for little things A governing class imbued with it may not be capable of leading the masses of people to the highest pitch of welfare for them; but it sets them an invaluable example of qualities without which no really high welfare can exist. This has been done for their nation by the best aristocracies. The Roman aristocracies did it; the English aristocracy has done it.⁸

In Mason's view such was the way Taft regarded the barrister in the English legal system. Taft found our system sadly lacking for a peer. Such a paean of praise for aristocracy is a bit heavy these days, but may still be indicative of the occasional excesses of affection and reverence with which we sometimes view English traditions.

More recently, Chief Justice Burger has directed attention to the English system.⁹ While explicitly abjuring the notion of transplanting the system here, the Chief Justice suggested that we can learn much from its operation. Several noteworthy points of the English legal system in his view are the separation of the profession into two branches (especially the specialization of barristers as oral advocates), the training of barristers "in a centuries-old school conducted by the four Inns of Court,"¹⁰ the practice of pupillage or apprenticeship following formal schooling, and, finally, the existence of a professional community among the Inns of Court and the Royal Courts of Justice (encouraged by their physical proximity, among other reasons).¹¹

Chief Justice Burger noted that English training in advocacy stresses ethics and civility, both in court and in relations with colleagues, and suggested that such training has produced excep-

7. *Id.* at 63.

8. *Id.*

9. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973) (4th Annual John F. Sonnett Memorial Lecture).

10. *Id.* at 228. For an explanation and description of the Inns of Court, see notes 25-29 and accompanying text *infra*.

11. *Id.*

tionally high standards of behavior. He also argued that English advocates on the whole are better than ours:

English advocacy is generally on a par with that of our best lawyers. I emphasize that their best advocates are no better than our best, but I regret to say that our best constitute a relatively thin layer of cream on top while the quality of English barristers is uniformly high, albeit with the graduations of quality inescapable in any human activity.¹²

The Chief Justice concluded that we can learn at least three things from the English legal system: (1) lawyers cannot be equally competent for all tasks, and thus some sort of specialization is desirable; (2) legal educators should employ a system under which law students or novice lawyers can learn and specialize as oral advocates under expert tutelage; and (3) ethics and civility are essential ingredients in a judicial system and therefore in a law student's education.¹³

Contrast the Chief Justice's views with those that open Robert Stevens' excellent historical survey of American legal education:

If one ignores the increasing student rumblings of the last five years, there is much to justify the satisfaction felt by many with the American contribution to legal education. Almost every other aspect of the indigenous legal system has been subjected to severe criticism and unfavorable comparisons. In contrast, American legal education has received a largely favorable press. From the time that Bryce noted that he did "not know if there is anything in which America had advanced more beyond the mother country than in the provision she makes for legal education" . . . , nearly all observers have drawn favorable comparisons between the system of legal education in this country and that of at least other common law countries.¹⁴

Such conflicting perceptions of the relative quality of American and English legal education are an impetus for this Section. If, as Chief Justice Burger suggests, English barristers are in the aggregate superior advocates,¹⁵ perhaps the educational system

12. *Id.* at 229.

13. *Id.* at 229-30.

14. Stevens, *Two Cheers for 1870: The American Law School*, in *LAW IN AMERICAN HISTORY* 405 (D. Fleming & B. Bailyn eds. 1972) (footnote omitted).

15. We have no way of testing his judgment. For the purposes of this Section, we merely assume that he is correct and look to the educational and professional practices that may have produced superior advocacy in England. Those practices can be examined and evaluated independent of the Chief Justice's estimate of superiority.

that produces them is at least partly responsible. On the other hand, if examination of the English system of legal education yields no clear evidence of different or superior educational practices, which would tend to support Stevens' view, and if in fact oral advocacy in English courts is extraordinary, something other than the educational system must be responsible.

Of central interest in this inquiry into the English legal system is the apparently close and continuous involvement of professional organizations and practicing barristers and solicitors in the training of aspiring lawyers and novice practitioners. In the instance of the bar, such involvement is seen both in the tradition of barristers taking meals with students in the hall of the four ancient Inns of Court¹⁶ and in the requirement of pupillage. Pupillage is the yearlong period following call to the bar that a novice barrister must spend in the chambers of a practicing barrister who has been at the bar for not less than five years.¹⁷ In the instance of solicitors, the involvement of practitioners with novices is evidenced through the requirement of articles of clerkship. Following (or sometimes prior to) the final solicitor's examination, an aspiring solicitor must serve under articles to a solicitor who has been in practice for at least five years.¹⁸

This interaction of veteran and novice through meals at the Inns, pupillage, and articles provokes inquiry of whether these techniques are keys to a better form of legal training, whether

16. The "flavor" of eating a dinner in the hall of an Inn is best conveyed by the account of a participant. In the following excerpt, the writer describes the obligatory toasts at the dinners. Diners eat in groups of four—each group constituting a "mess":

The senior it is who leads the toasts to the members of the mess. At a convenient moment he raises his glass and repeats the names of the other 3 diners, in the order in which he has served them, "naming them severally, but drinking to them collectively" according to the 7th Custom of Gray's Inn Hall. In fact, some general phrase is often added, thus in a mess of students one might hear, "Mr. Smith, Mr. Brown, Mr. Robinson, your very good health", where Mr. Robinson is the junior. Mr. Smith would then raise his glass and perform the toast, substituting the senior's name for his own, and so on through the rest of the mess. "During dinner, before the sweets have been removed" (custom 8), the senior must toast the messes immediately above and below his own (although he may not drink to the former before they have toasted down to him) on behalf of his mess. He will probably ask "Mr. Senior of the lower mess, may we toast you now?" for it is necessary that the receiving mess has already toasted *inter se*, and, again, it is wise to avoid a mistake.

Gay, *Courtesy and Custom in the English Legal Tradition—On Dining at Gray's Inn*, 28 J. LEGAL EDUC. 181, 186 (1976). Such a dinner would certainly be interesting and curious for most of us.

17. COUNCIL OF LEGAL EDUCATION, *THE CONSOLIDATED REGULATIONS OF THE HONORABLE SOCIETIES OF LINCOLN'S INN, INNER TEMPLE, MIDDLE TEMPLE AND GRAY'S INN* 24 (1975).

18. THE LAW SOCIETY, *A GUIDE FOR ARTICLED CLERKS* 11-13 (5th ed. 1972).

they bridge the "student-practitioner gap," and, if these techniques are successful, how they have been developed and maintained. In this country, after all, apprentices were so often exploited or ignored by their masters, to the detriment of the students' training, that apprenticeship requirements have been abandoned in most jurisdictions.¹⁹

In due course we went to England to search for answers ourselves. Our research support and other duties warranted only an admittedly short and possibly cursory visit. We scheduled interviews with officials at the Law Society²⁰ and the Inns of Court and with teachers or administrators at the organizations' respective law schools.²¹ We also met with one of the former chairmen of the Council of Legal Education²² and with a barrister-civil servant who had assisted in the work of the Ormrod committee.²³ Following a brief discussion of the historical development of English legal training, we will conclude this Section by sharing the impressions and conclusions we derived from these interviews as well as from what others have written about legal education in England.²⁴

B. A Brief History of English Legal Education²⁵

1. A chronology of early developments

When Americans think of English legal education, they most

19. See Section III *supra*, *passim*.

20. The Law Society is the professional organization representing the solicitor branch of the profession.

21. The Inns of Court School of Law is the professional school for the bar; the College of Law is the school run by the Law Society for solicitors. For further discussion of the function of these schools, see notes 73-76, 81-83 and accompanying text *infra*.

22. The Council of Legal Education, a committee of the Senate of the Inns of Court and the Bar, is charged with education and training for the bar.

23. The Ormrod committee was appointed by the Lord High Chancellor of Great Britain to study and make recommendations upon the training for the legal profession in England and Wales.

24. See, e.g., B. ABEL-SMITH & R. STEVENS, *LAWYERS AND THE COURTS* (1967); F. LAWSON, *THE OXFORD LAW SCHOOL, 1950-1965* (1968); Edlun, *Contemporary English Legal Education*, 10 J. LEGAL EDUC. 11 (1957); Gower, *English Legal Training: A Critical Survey*, 13 MOD. L. REV. 137 (1950); Green, *Legal Education in England*, 28 J. LEGAL EDUC. 137 (1976); Hughes, *The Training of Solicitors in England*, 16 J. LEGAL EDUC. 300 (1964); Jenks, *English Legal Education*, 51 L.Q. REV. 162 (1935); Wilson & Marsh, *A Second Survey of Legal Education in the United Kingdom*, 13 J. SOC'Y PUB. TCHRS. L. 241 (1975). See also B. ABEL-SMITH & R. STEVENS, *IN SEARCH OF JUSTICE* (1968).

25. For the early history of the legal profession in England we have drawn heavily from G. RADCLIFFE & G. CROSS, *THE ENGLISH LEGAL SYSTEM* (5th ed. G. Cross & G. Hand 1971). For the history of English legal education we have drawn heavily on the structure and content of the Ormrod report, *REPORT OF THE COMMITTEE ON LEGAL EDUCATION*, CMND. No. 4595 (1971) [hereinafter cited as COMMITTEE ON LEGAL EDUCATION].

likely think of the Inns of Court. From their beginning in the 14th or 15th centuries, the Inns have been associations of practitioners and students of the common law.²⁶ They were originally guilds—residential and working communities convenient to the Royal Courts at Westminster. Each Inn was composed of a governing body of seniors (benchers), ordinary barristers, and students. From among the benchers were chosen readers who gave the students instruction in law. The teaching tradition was oral, composed of moots, discussions, and lectures.²⁷

Our mental image of the Inns of Court oversimplifies the nature of the legal profession in England in the Middle Ages, for even then one had to distinguish the professional roles that eventually became known as barristers and solicitors.²⁸ In those days the intermediaries of litigants in the Royal Courts were known as “attorneys.” Attorneys were essentially responsible for formal pleadings in those courts. In time another role emerged, that of the “narrator” who recounted a litigant’s tale in court and thus, as an oral spokesman, was the precursor of the barrister.

By the beginning of the 14th century, distinct professional organizations began to emerge. Attorneys came to be regarded as officers of the courts in which they practiced, and by 1402 their qualifications were examined by the judges of those courts. About the same time, senior narrators formed an order known as “Serjeants-at-Law,” while the rest of the narrators formed the Inns of Court. The serjeants gained exclusive audience in the Court of Common Pleas, and eventually the judges of the King’s Courts were chosen from among them.²⁹ Meanwhile the Inns of Court prospered, and the admission of narrators (barristers) was left to the Inns’ control. By the late 16th or early 17th century, the attorney’s role was sufficiently distinct that attorneys were excluded from membership in the Inns of Court, although they were still eligible for membership in the Inns of Chancery.³⁰ The attorney became the intermediary between the barrister and the

26. G. RADCLIFFE & G. CROSS, *supra* note 25, at 385.

27. See H. HANBURY, *supra* note 4, at 7.

28. In the short space allotted here, of course, we too must oversimplify the complex history of the legal profession in England.

29. G. RADCLIFFE & G. CROSS, *supra* note 25, at 383-85. In certain respects the serjeants of those days are like the Queen’s Counsel of today. Queen’s Counsel are senior barristers who wear silk gowns as a symbol of their special status that is conferred by the Lord Chancellor. Queen’s Counsel plead important cases, and from their members judges for the principal courts are chosen.

30. The Inns of Chancery also offered instruction, and their students could “graduate” to the Inns of Court for further instruction as barristers. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 4.

client, and the rule developed that no barrister could work for a client without the intervention of an attorney.

In time the role of the attorney paralleled that of the solicitor. The solicitor was originally a litigant's agent in chancery, and by the middle of the 17th century that role had achieved separate professional status. The role of attorney and solicitor were in effect merged by the creation in 1739 of the Society of Gentlemen Practisers in the Courts of Law and Equity.³¹ The pertinent training for the merged profession had been previously prescribed by statute in 1729 as five years' apprenticeship under articles of clerkship.³²

During the great days of the Inns of Court (probably the 14th, 15th, and early 16th centuries), the universities at Oxford and Cambridge provided no instruction in the common law, since they dealt only with the civil and ecclesiastical law and did not teach them very well.³³ Thus, with the exception of apprenticeships, only the Inns served to transmit the common law from one generation of lawyers to the next. Unfortunately, however well the Inns of Court may have performed their task in early years, historians and commentators agree that they had probably "passed their peak" by the end of the 16th century,³⁴ "fell into decay" during the 17th,³⁵ and were virtually "moribund" by the early 18th century.³⁶ The reasons for decay were manifold. The Inns' educational function apparently was disrupted by the English civil war³⁷ and suffered further from the familiar difficulty of getting busy practitioners to spend the time necessary to train aspiring barristers.³⁸ Moreover, the rise of the printed book resulted in a decline of the oral tradition of moots, discussions, and lectures.³⁹ In any event, with the common law still not being taught at the universities, the only available substitute for legal instruction following the decline of the Inns was apprenticeship. Thus, by the beginning of the 18th century, there was no formal legal education in England, either for barristers or solicitors.

31. G. RADCLIFFE & G. CROSS, *supra* note 25, at 387-88.

32. *Id.* at 388.

33. F. LAWSON, *supra* note 24, Chapter I *passim*.

34. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 4.

35. G. RADCLIFFE & G. CROSS, *supra* note 25, at 391.

36. F. LAWSON, *supra* note 24, at 2.

37. *Id.*

38. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 4.

39. H. HANBURY, *supra* note 4, at 8.

2. *Early attempts at educational reform*

Potential winds of change toward a more formal legal education system came from the universities, notably from Oxford, where Blackstone in 1753 gave the first of a series of lectures on the common law. Blackstone was then a Fellow of All Souls College⁴⁰ since there was no professorship of English law. In 1758, however, he became the first Vinerian Professor of English Law, and from then until 1765 he delivered the series of lectures that, when published, became known as the *Commentaries*.⁴¹ In 1800 Cambridge followed Oxford's lead with the creation of the Downing Professorship of the Laws of England.⁴² These innovations were evanescent, however, for after Blackstone resigned his chair in 1765, the quality of the teaching of common law declined at Oxford and the Vinerian Chair was often little more than a sinecure.⁴³ The fate of the Downing Chair at Cambridge was much the same, and more than fifty years passed before any major new efforts at reform in legal education occurred.

A small revival of university-based legal education and a parallel revival of legal education in the profession occurred in the first half of the 19th century. With the establishment of a law school at University College, London, in 1826, England offered what appears to be the first degree that could in any sense be described as one in English law.⁴⁴ Soon thereafter, in 1831, the Society of Gentlemen Practisers and other smaller professional associations joined together to form the Law Society. The Law Society began to offer lectures to aspiring solicitors in 1833. In 1836, a rule of court required articulated clerks to pass an examination before admission as solicitors; this rule was made a statutory requirement by the Solicitors Act of 1843.⁴⁵ During this same period, about 1846, the Inns began to reintroduce law teaching through the appointment of three readers who gave lectures to aspiring barristers.⁴⁶

These events at the University College and within the legal profession presaged more comprehensive efforts at reform. In 1846, a Select Committee on Legal Education was created by the

40. *Id.* at 14. All Souls College is a college of graduate scholars only.

41. COMMENTARIES ON THE LAW OF ENGLAND (1765-1769).

42. COMMITTEE ON LEGAL EDUCATION, *supra* note 25 at 5; see H. HANBURY, *supra* note 4, at 19-20.

43. F. LAWSON, *supra* note 24, at 4.

44. Gower, *supra* note 24, at 141.

45. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 5.

46. *Id.* at 9.

House of Commons to investigate the state of legal education in England.⁴⁷ The committee's report found that there was then virtually no institutional law teaching in England except at University College. At the Inns of Court, not only was there virtually no professional training, there was also no test of any kind as a condition for call to the bar.⁴⁸ One witness before the committee testified:

[A]ll that has been required has been, that the candidate to be called to the Bar should be of fair character; that he should have been a certain number of years upon the books of the Society; that he should have kept a certain number of terms, by eating a certain number of dinners in the Hall each term, and have gone through the form of performing what are still called Exercises, but which consist of a mere farce of a case being stated, and a debate on each side; but the parties being stopped by the time they have read three words of the case, or the argument on either side, the case and argument being furnished to them by an officer of the Society.⁴⁹

Complaints against the training of solicitors were almost as severe. The examination required by the 1843 statute was viewed "merely as a guarantee against absolute incompetency,"⁵⁰ and the system of articles was even then subject to a now-classic complaint:

Indeed, it is a general complaint on the part of articulated clerks themselves, that very little attention is paid by the solicitor to the direction of their studies; in fact, it can scarcely be expected from solicitors in any degree of practice; their time is so much occupied with the duties of their profession that they can scarcely take up the points which are requisite for looking after their education. There is no such prescribed course of occupation during the day . . . if very much depends upon the articulated clerk himself; he is left almost entirely to his own discretion; and therefore, unless he qualifies himself for that purpose, nothing will be put into his hands beyond what any person could do, namely copying.⁵¹

To remedy the legal education deficiencies, the select committee recommended that universities develop or expand their

47. Gower, *supra* note 24, at 141.

48. *Id.* at 141-42.

49. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 6.

50. *Id.*

51. *Id.* See also comments by American apprentices, Section III, notes 11-13 and accompanying text *supra*.

offerings and assume a leading role in the academic legal education of barristers and solicitors. Recognizing a reluctance on the part of universities to provide practical, vocational education, however, the committee argued that "special institutions" should be created to provide vocational training. The committee considered the possibility of a common "special institution" for both the barrister and solicitor branches of the profession, but instead recommended two schools: essentially technical institutes created and run by each branch for the practical training of their respective aspiring practitioners. Finally, the select committee recommended both entrance and qualifying examinations for both branches of the profession.⁵² The report of the select committee of 1846 was seminal because it cast English legal education into the form from which it has not yet emerged: initially, education in legal principles (academic stage); followed by professional training (practical stage); and culminated by qualifying examinations.

The response to the committee's report from the academic side was prompt. Law-related degrees were established in 1852 at Oxford and in 1855 at Cambridge, although two decades passed before the creation of the Honor School of Jurisprudence at Oxford in 1872 and the Law Tripos at Cambridge in 1873.⁵³ The university degrees, however, did not meet all the academic needs of aspiring practitioners. The syllabus for the B.A. at Oxford included only Roman law, international law, jurisprudence, constitutional history, and the history of real property, failing to cover such core subjects as torts, contracts, equity, criminal law, and evidence.⁵⁴ These courses were probably omitted because

[t]he concept of liberal education held at the ancient universities meant that law could only be taught if it could be shown to be non-vocational and unconcerned with current problems. In seeking to meet these terms, the early academic lawyers had invented over-simplified myths about vocational and non-vocational subjects and had carefully avoided approaching the teaching of law in terms of social utility. It was somewhat ironic that while the profession had been convinced that law taught in this way was of little or no value to them, the other parts of the universities were still unconvinced about the academic respectability of law.⁵⁵

52. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 7-8.

53. *Id.* at 8-9.

54. B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 166.

55. *Id.* at 168.

Even the Oxford Law School did not attract the best university students, who generally continued to read classics. Indeed, few students overall were attracted to law in the university.⁵⁶

Concurrently with these developments at the universities, the Inns formed the Council of Legal Education in 1852 to enhance their educational program and expanded the instructional program to include five readers who taught constitutional law and legal history, Roman law and jurisprudence, "Common Law," equity, and real property.⁵⁷

These changes were not enough to satisfy many English legal educators, however. In 1855, another commission again considered legal education for the profession. That commission recommended the creation of a "legal university" with degree-granting power. Such an institution might have bridged the gap between academic and professional training by bringing academic and practicing lawyers together in one setting, but the idea, like much of the report of the select committee of 1846, was stillborn.⁵⁸ The next wave of scrutiny came in 1870 when the Legal Education Association was created to urge reforms once again. The association's blueprint for reform urged the creation of a "general school of law" to provide joint education for aspiring solicitors and barristers. No consensus on the suggestion was reached among either solicitors or barristers. Despite repeated efforts between 1870 and 1877 to achieve agreement, the proposal fell short of adoption.⁵⁹

Several times between 1884 and 1900 other efforts were made to create a "legal university" by merging the teaching functions of the Law Society and the Council of Legal Education with the law courses at the University of London. Usually the Law Society was compliant, but the Inns (one or more of them) were reluctant.⁶⁰ As one commentator has observed of the Inns:

The project to create a general school of law in association with the University of London had foundered upon the same obstacle that had beset earlier schemes of a similar character. The Inns of Court refused to cooperate. They were unwilling to

56. *Id.* at 166.

57. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 9.

58. *Id.*

59. *Id.* at 10.

60. Green, *supra* note 24, at 151:

The romantic stereotype that Americans have of the Inns of Court as a priesthood with a monastic devotion to the cult of the law is one, at least as far as legal education is concerned, wholly at odds with the actual behavior of the bar in England in the past century and a half.

share any of their responsibilities for legal education with outsiders.⁶¹

The reluctance of the Inns to cooperate continued even after a considerable sum of money, derived from the sale of two defunct Inns of Chancery, became available for legal education.⁶² The final blow to a "legal university" operated by the Inns and the Law Society came in 1913 with the report of the Haldane Commission on University Education in London that denigrated the idea. The commission's view was that university training, although important,⁶³ should be kept separate from practical training lest the universities be contaminated by excessive demands for "practicality," hearkening back to the select committee report of 1846 that suggested the same division.

This division between academic and vocational training was the background against which the Law Society founded its own school in 1903 and the bar's Council of Legal Education expanded again the scope of its lectures. The frank object of both organizations' actions was to facilitate the passage of professional examinations. As noted before, written examinations for solicitors dated from 1836, and the bar examination for barristers became compulsory in 1872. In 1922, a compulsory academic year, requiring enrollment in the Law Society's school or in another program approved by the Law Society, was introduced for aspiring non-graduate solicitors.⁶⁴

Even with these modifications, however, the educational preparation for the bar remained essentially unchanged from the late 19th century until after World War II. Most barristers were university graduates and an increasing number held undergraduate degrees in law. Aspiring barristers prepared for the bar either through the lectures offered by the Council of Legal Education or through their own personal study and the help of private coaches. Pupillage was not yet obligatory, but was in practice the primary

61. B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 174.

62. *Id.* at 174-77.

63. In the commission's own words:

We have no doubt that law as a whole, including the law of England as it stands today, is a department of learning which ought to be included within the scope of a university. The most scientific study of it which a university can provide will be the best foundation for professional work, and will alone fit a man to deal with intellectual freedom, and from a wide point of view, with the questions he will have to answer from day to day in his professional practice.

Id. at 179 (quoting ROYAL COMMISSION ON UNIVERSITY EDUCATION IN LONDON, FINAL REPORT, CD. 6717, para. 337 (1913)).

64. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 13.

means for acquiring practical training.⁶⁵ According to an 1892 issue of the *Law Quarterly Review*, the training available through the council was "not much inferior . . . to an average second-rate American Law School."⁶⁶ And according to one source,

[t]he [bar] examination was essentially factual. All the candidate needed to do was to memorize answers to a limited number of possible questions. The system provided a "very profitable field" for the crammer, and it continued because of the limited vision of existing barristers. It was possible for a hard-working student to qualify for the final examination in three months. Most barristers had "had to pick up their law in chambers and offices as best they could." They had "never heard of any other way of learning law", and therefore did not believe that there was any other way.⁶⁷

This tortuous history of incremental change and failed reforms illustrates that at least until after World War II several features characterized English legal education. First, the academic teaching of English law was quite difficult to establish. In fact, it was not effectively employed until the last quarter of the 19th century, and even then for some time the teaching of law was of rather feeble status within the universities and a weak attraction for prospective students. Second, the current system of professional training offered through the Law Society and the Council of Legal Education dates only from the middle of the 19th century, and even then the lectures offered have been geared to relevant professional examinations. Students have not been required to attend lectures and could prepare on their own or with the help of crammers. Third, compulsory written examinations for solicitors date only from 1836 and for barristers only from 1872. Fourth, all efforts to merge or even blend academic and vocational education or, failing that, to create a common institution for training aspiring solicitors and barristers have met with failure. Finally, at least through the end of World War II, none of the principal commentators on English legal education describes either university instruction in law or the professional training offered through the Law Society or the Council of Legal Education as successful or even adequate.

65. B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 358-59.

66. Notes, 8 L.Q. REV. 19-20 (1892), *quoted in* B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 171.

67. B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 171-72 (footnotes omitted).

3. *Post-World War II developments*

English legal education since 1945 has been influenced by three major factors: first, the great expansion of higher education in England that resulted in more students studying law; second, the national system of public financing of students' education; and third, the increased earning potential for young people in careers in business and industry.⁶⁸ These factors combined to effect considerable changes in the process of training for the legal profession, most notably by expanding law teaching in universities, colleges, and polytechnics. Additionally, the time-honored system of articles, wherein aspiring solicitors paid premiums to their masters, gave way under economic pressures to one in which articles provide a modest salary.

Still, even with these changes, many of the tensions within the English system of legal education remained unaltered. Complaints against the poor quality of training provided through articles continued.⁶⁹ Even when these complaints combined with the economic pressure mentioned above, the Law Society continued for a time to favor the retention of articles. Retention was urged in a Law Society committee report of 1966,⁷⁰ and not until 1968 did another committee of the Law Society recommend that articles be replaced by a vocational-type course followed by restricted practice for three years.⁷¹ The requirement of pupillage for aspiring barristers came under somewhat less pressure. The creation of a system of legal aid together with underrecruitment of barristers made it possible for pupils to get briefs from solicitors early and easily. This relaxation led to a 1965 rule restricting acceptance of briefs until completion of six months of pupillage and to a proposal that pupillage be preceded by a period of practical training given by the Council of Legal Education.⁷²

By this time both the solicitor and bar examinations were divided into two sections, with part I following academic training and part II following vocational training. In 1962 the Law Society decided to allow taking of part II of the solicitor examination before the vocational period of articles. This decision was accompanied by the integration of the Law Society's lectures with the tutelage expertise of Gibson and Weldon,⁷³ the leading law

68. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 15-16.

69. Gower, *supra* note 24, at 152-53.

70. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 16.

71. *Id.* at 17.

72. *Id.*

73. The Gibson and Weldon facilities were at Guildford, Surrey (near London). These

coaches in England, to form the College of Law. The College of Law was organized to facilitate academic training for part I of the solicitor exam.⁷⁴ The merger occasioned the following comment by one observer:

It was here that the Law Society played its trump card. It merged its school with Messrs Gibson and Weldon. In some countries the transfer of the formal education of the major part of the legal profession to a private crammer might cause some surprise. Not so in England. The feelings of the profession were reflected in the view of the *Solicitors' Journal*: "Obviously the new college will be one of the most impressive educational institutions in the country and we hope it will be a real rival to the universities and not merely a substitute."⁷⁵

Those without an undergraduate law degree were required to attend the College of Law's part I course or to complete a course at a center approved by the Law Society before they could take the examination.

The Inns of Court, for slightly different motives, soon followed suit with the creation of a part I academic institution for aspiring barristers. In the mid-1960's, the Inns were inundated with students from Commonwealth countries, and, partly in response to that circumstance, the Council of Legal Education opened the Inns of Court School of Law in 1964. Three years later the governance of the Inns was reformed through the creation of the Senate of the Inns of Court and the Bar, and the Council of Legal Education became a senate committee.⁷⁶

In 1967 a conference of law teachers and practitioners from England and the United States was held, and its proposals followed a familiar formula. According to these proposals, acquisition of substantive legal knowledge should be undertaken in universities or equivalent institutions, followed by group training in "practical" skills of the law at a professional law school, and capped with experience in the setting of actual legal practice.⁷⁷ This conference, whose findings echoed those of the study conducted by the Select Committee on Legal Education over a cen-

facilities remain one of the teaching sites of the Law Society's College of Law.

74. In addition to the Guildford site, the College of Law has facilities at Lancaster Gate, London, and Chancery Lane in Chester. For a discussion of the educational program of the College of Law, see note 81 and accompanying text *infra*.

75. B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 353-54 (quoting 106 SOLICITORS' J. 101 (1962)) (footnotes omitted).

76. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 19.

77. *Id.*

ture earlier,⁷⁸ was a prelude to the most recent comprehensive review of English legal education: the Ormrod committee report.

C. *Current English Legal Education*

1. *The Ormrod committee report*

In 1967 a committee, which came to be known by the name of its chairman, the Honorable Mr. Justice Ormrod, was appointed by the Lord High Chancellor of Great Britain to study and make recommendations about English legal education. At the time of the writing of the Ormrod committee report in 1971, there were twenty-two university law schools in England and Wales, seven colleges (six polytechnics) granting the C.N.A.A. law degree,⁷⁹ and several colleges that taught for the external London LL.B.⁸⁰ The Ormrod committee estimated that in 1970 there were about 5,000 students reading law in universities and that about eighty percent of those called to the bar and about forty percent of newly admitted solicitors were law graduates. With these statistics as background, the Ormrod report described the then-current processes for training solicitors and barristers. A short summary of these findings follows.

a. *Training of solicitors: 1971.* Nongraduates ("school-leavers") and graduates in fields other than law ("non-law graduates") had to attend an approved course lasting one academic year, either at the College of Law or at a Law Society course, prior to taking part I of the solicitor's exam. A student who successfully passed part I would then enter articles for at least four years, and could take the part II examination at any time after one year under articles. A part II preparation course of six-months duration was also offered at the College of Law. Holders of undergraduate law degrees ("law graduates") were normally exempted from part I of the solicitor's examination and could take part II as soon as they were ready. They would generally serve two years under articles after passing part II. The alternative of serving under articles and then taking part II, however, was also available.⁸¹

b. *Training of barristers: 1971.* Consistent with tradition, aspirants to the bar had to be admitted to an Inn and "keep

78. See notes 47-52 and accompanying text *supra*.

79. The Council on National Academic Awards is the accrediting agency that authorizes the granting of degrees by institutions other than universities.

80. An external LL.B. is obtained through correspondence courses offered by the University of London. Courses that are geared to the passage of the external London LL.B. examinations are offered at a number of places in England.

81. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 24-25.

terms" by eating the requisite number of dinners over the prescribed number of terms. Law graduates were normally exempted from part I of the bar examination. Non-law graduates could prepare for the part I examination at the Inns of Court School of Law or the Law Society's College of Law, through law coaches, or on their own. The part I program at the School of Law was set for two years, and that apparently was the normal preparation period for the part I exam.

Under a plan implemented in 1969-1970, all those who intended to practice at the English bar were required to attend a part II course of one academic year at the Inns of Court School of Law or, for the present, at the College of Law. Parts I and II of the bar examination were redesigned so that part I was to test knowledge of basic substantive law while part II was to be "vocational." Under this division the required year of training for part II included "practical exercises" intended to provide the "basic skills needed by the young barrister in his first year of practice."⁸² Upon completion of this vocational course and passage of the part II examination, a student was called to the bar. For those intending to practice, however, a one-year pupillage was still required, with the continued restriction that no briefs could be accepted until completion of the first six months.⁸³

2. *English self-evaluation*

In formulating the above description of the educational process in England, the Ormrod committee took evidence from representatives of the two branches of the profession and other legal educators. Their presentations provide perhaps the best recent evaluation of the English legal educational system.

The presentation of the Council of Legal Education to the Ormrod committee was largely an explanation of both the council's recent effort to make the bar examination something other than a memory test and the council's innovations in the teaching of professional techniques and skills during the part II course. While noting the importance of academic training at a university, the council urged the continuation of part I instruction so it would be available at the Inns of Court School of Law to non-law graduates or school-leavers.⁸⁴

82. Submission No. 3 to the Royal Commission on Legal Services from the Senate of the Inns of Court and the Bar on Behalf of the Council of Legal Education 5 (1976) [hereinafter cited as Submission No. 3].

83. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 26-27.

84. *Id.* at 193.

The Law Society's presentation to the Ormrod committee was much more critical of current solicitor training, possibly because the Law Society had not recently implemented a set of reforms as had the Council of Legal Education. The presentation can best be outlined through a portion of its own summary:

- (a) There is evidence that many—and an increasing number of—articled clerks do not receive satisfactory practical instruction under articles; and whether an articled clerk in fact receives satisfactory instruction is a matter of chance.
- (b) In some parts of the country it is difficult to find vacancies under articles; this applies particularly to non-graduates but graduates are also being lost to the profession because they cannot find solicitors who are prepared and able to pay them during the period of articles the sort of remuneration payable to graduate trainees in commerce and industry.
- (c) The scope and extent of the syllabus of the Qualifying Examination has developed in such a way that:—
 - (i) the concept that Part I should be similar in approach and standard to a degree examination has not been realised;
 - (ii) the examination, and particularly Part II, has become a test of memory and endurance;
 - (iii) the courses aimed at preparing students for such examination are necessarily in the nature of "cram" courses.⁸⁵

To remedy these problems, the Law Society recommended that articles be replaced by a vocational course with practical exercises, followed by three years of limited practice in a solicitor's office. In the Law Society's view, academic training was preferably obtained in universities, colleges, or polytechnics. The society favored the requirement of an undergraduate university degree or its equivalent and would, in the instance of the law graduate, have allowed qualifying examinations to be administered by the law schools or, if necessary, by the Law Society. For the university non-law graduate, it was recommended that universities and colleges provide an eighteen-month course as preparation for a qualifying examination. Thus, the society would have barred school-leavers from entry to the solicitor's branch of the profession, unlike the Council of Legal Education which would still have accepted school-leavers as aspiring barristers.⁸⁶

The presentation of the Society of Public Teachers of Law,

85. *Id.* at 215-16.

86. *See id.* at 200.

a society of academic law teachers founded in 1908, also supported the law degree as the recommended credential for qualification, with the degree being accepted per se as completion of the academic stage. The society made no recommendations concerning the vocational stage of professional preparation.⁸⁷

With the spokesmen for both barristers and solicitors favoring a primary, if not exclusive, role for university law schools in the academic stage of professional preparation, the prospects for deferring the choice between a barrister's or solicitor's career until completion of the academic stage were improved. Completion of a university law degree and recognition of that degree as per se completion of the academic stage for both branches of the profession would accomplish that objective for university graduates. For school-leavers, the decision could be deferred by instituting a common professional examination. The presentations on behalf of the Law Society⁸⁸ and the Society of Public Teachers of Law⁸⁹ both favored such a common examination, and the Senate of the Four Inns of Court on Education and Training for the Bar agreed.⁹⁰

3. *The Ormrod recommendations*

The presentations to the Ormrod committee by the two branches of the profession had much in common. Both recognized the primacy of university education for the academic stage. Both sought to make the vocational stage a better and more practical preparation for actual practice, and both saw vocational education as the primary purpose of their respective professional schools. The Law Society was willing to abolish the requirement of articles and replace it with vocational training and limited practice. The emphasis placed on practical training and practical exercises by the Council of Legal Education in its redesigned part II instruction also was based on the recognition of the limitations of pupillage. Finally, both recognized the possibility of increased cooperation in the common recognition of university law degrees in lieu of part I and in the possibility of a common professional examination for non-law graduates or school-leavers. Putting these common features in order, the principal issues confronting

87. The society noted that "[i]t is not for us to suggest in detail the arrangements by which the training in professional techniques would be carried out by the two branches of the profession." *Id.* at 229.

88. *Id.* at 221.

89. *Id.* at 230-31.

90. *Id.* at 199.

the Ormrod committee can be summarized as follows: In the instance of university or college graduates from fields other than law, who should be responsible for providing their academic education in law, what should it include, and how long should the training be? Should the profession be made a graduate one? Should a university or college degree be made a qualification for both branches of the profession? Who should conduct the vocational stage of professional training? What should it include and how long should it be? Should articles and pupillage be replaced by part II vocational instruction, or should they be continued, albeit modified in light of part II instruction? The Ormrod committee's report treated these and other issues and in fact went further than the two branches of the profession themselves had recommended.

First, in the view of the committee, the academic stage of legal education should provide a student with a basic knowledge of the law and where to find it; an understanding of the relationship of law to the social and economic environment in which it operates; and the ability to handle facts and apply abstract concepts to those facts.⁹¹ Certainly few could quarrel with this conclusion.

The committee next noted that the difficulty of allocating responsibility for academic and vocational stages of training comes from the long-standing English view of what is academic and what is vocational. The traditional view holds that courses such as evidence, practice and procedure, wills and estates, sales, and domestic relations are vocational subjects. Academic lawyers have sometimes abjured teaching these courses in universities,⁹² and the professional schools have often claimed instruction in such subjects for themselves. The Ormrod committee recommended that "[t]he traditional antithesis between academic and vocational, theoretical and practical, which has divided the universities from the professions in the past, must be eliminated by adjustment on both sides."⁹³ As part of this "adjustment," the committee recommended that the academic stage of legal education should be exclusively provided in a university or a college. This recommendation would entail the eventual abolition of teaching for part I of the professional examinations by the College of Law and the Inns of Court School of Law.

91. *Id.* at 43.

92. Green, *supra* note 24, at 171.

93. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 34.

In addition, the Ormrod committee concluded that the legal profession should become a "graduate" profession, *i.e.*, one for which an undergraduate university degree or its equivalent is a condition of admission. Moreover, the committee felt that potential barristers and solicitors should graduate in law.⁹⁴ The committee also recommended a common professional examination for non-law graduates, and suggested that the vocational stage should consist of a year's course including practical legal subjects, practical exercises, and certain nonlegal subjects such as "behavioral science and business finance."⁹⁵

Probably the most controversial aspect of the Ormrod report was the view that the vocational stage of education should be taught within colleges and universities. This recommendation would entail the merger of the College of Law and the Inns of Court School of Law with universities or colleges to create at least four university or college vocational training centers.⁹⁶ The committee also recommended that articles of clerkship be replaced by three years' limited practice as had been proposed by the Law Society. Pupillage should be retained, subject to the reform of the payment of pupil's fees.⁹⁷ Additionally, the "keeping of terms" through the eating of dinners at the Inns "should be adapted to present day conditions."⁹⁸ The committee really did little to explain how that might be done, except to suggest that the required number of terms be kept to a minimum and that some provision be made for keeping terms outside of London.⁹⁹ On the subject of proficiency exams, the committee determined that professional part II examinations should be open book "tests of practical proficiency"¹⁰⁰ rather than tests of memory and endurance.

Finally, an important nonsubstantive recommendation of the committee was that an advisory committee on Legal Education be established as a "link between the universities and the profession."¹⁰¹ The advisory committee would consist of representatives of the Law Society, the Inns, law teachers, and practic-

94. *Id.* at 44. The Law Society's presentation to the committee had supported this view, but that of the Council of Legal Education had left the way open for school-leavers.

95. *Id.* at 61-62.

96. *Id.* at 64-68. A minority of the committee favored retention of the schools administered by the profession as the situs of vocational education.

97. *Id.* at 77-80.

98. *Id.* at 83.

99. For example, the requirement could be met by eating meals with the barristers in attendance on judicial circuits.

100. *Id.* at 82-83.

101. *Id.*

ing barristers and solicitors. Most importantly, the advisory committee would implement the Ormrod recommendations.¹⁰²

Although the committee's recommendations treated many more subjects than those mentioned here, the proposed legal education process can be summarized in three stages:

- * Stage 1 (Academic Stage): An undergraduate law degree or passage of a common professional examination for non-law graduates.
- * Stage 2 (Vocational Stage): A diploma or certificate from a vocational course in a university or college center.
- * Stage 3 (Practical Experience): Six months' pupillage for a barrister before accepting a brief or appearing independently in court or three years of limited practice for a solicitor.¹⁰³

4. *Reactions to the Ormrod recommendations*

Predictably, the Ormrod committee recommendations encountered some foot-dragging, particularly from the Law Society. The bar, however, was more receptive.

The bar quickly accepted the proposition that law should be a graduate profession, but this acceptance was probably less difficult for the bar than for the Law Society because for some time the majority of aspiring barristers had been university graduates. In 1975, eighty-seven percent of the aspiring barristers were British university graduates, and eighty-one percent of this group were law graduates.¹⁰⁴ Since 1975 students without university credentials have not been accepted by the Inns.¹⁰⁵ Undergraduate law degrees and their equivalents are recognized as satisfying the requirements of the academic stage of legal education, provided

102. A recent submission of the Senate of the Inns of Court and the Bar to the Royal Commission on Legal Services noted the following:

As a result of a recommendation in the Ormrod Report, an Advisory Committee on Legal Education was set up, under Lord Cross, and between 1972 and 1975 it issued four Reports, covering (inter alia) the following topics—the core subjects, the recognition of law, mixed and joint-honors degrees for the purpose of exemption from the academic Stage, the Common Professional Examination, and the categories of students to be admitted to it. The Council welcomed the setting-up of the Cross Committee as a valuable meeting place of law teachers and practitioners from both sides of the profession. It believes that the Committee has a continuing role to play in the future development of legal education.

Submission No. 3, *supra* note 82, at 7-8.

103. See COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 94-98. The current educational process for barristers and solicitors is summarized in the two charts accompanying this Section.

104. Submission No. 3, *supra* note 82, at 8.

105. *Id.*

that they contain courses in six core subjects. Non-law graduates attend a one-year course that covers the six core subjects of the academic stage. This course has been taught at both the College of Law and the Inns of Court School of Law,¹⁰⁶ but the Council of Legal Education has been negotiating for the transfer of the academic stage to academic institutions.

The bar also accepted the proposal for a common professional examination. Academic instruction in universities, colleges, or polytechnics was set to begin in October 1977, with the first common professional examination to be held in June 1978. The bar, however, did not accept the Ormrod recommendation that teaching for the vocational stage also be transferred to academic institutions or university centers. Instead, the bar has made the vocational stage the primary purpose of its School of Law with the idea that soon it will be the school's sole purpose. As it now stands, this vocational training at the School of Law, consisting of training in forensic exercises in advocacy, exercises in drafting, and appearance at court, is one of the most innovative facets of current English legal education.¹⁰⁷

106. It was the intention of the Council of Legal Education that all part II bar students attend the course at the Inns of Court School of Law, but due to space limitations the College of Law's facilities at Chancery Lane were used under license to the bar for a part II course. Students at the College of Law were to attend the practical exercises offered by the Inns of Court School of Law as a requirement of part II instruction. The following is a description of the current facilities and program at the Inns of Court School of Law:

The Council discharges its educational duties through its supervision and control of the Inns of Court school of Law. The present premises of the School of Law in Gray's Inn Place are owned by Gray's Inn and are let to the Council on favorable terms. The staff of the School of Law is headed by the Dean of Faculty. His main assistant is the Sub-Dean. The Administrative Staff consists of four Higher-Grade Administrative officers and seven other Administrative Officers, together with 11 other staff, such as typists, porters, telephonists, receptionists, etc. In the academic session 1976/77 there will be fifteen teachers on the full-time Academic Staff, consisting of one Reader, one Senior Lecturer and thirteen Lecturer-Tutors. Of these, four will be assigned to the Academic Stage and the remainder to the Vocational Stage. There will also be some twenty-five visiting lecturers, drawn from the universities and from practitioners at the bar. For tuition in the Practical Exercises about 90-100 practicing barristers are available, of whom about 65 will be actively engaged in teaching each week. The larger list is essential because of the range of subject-matter to be covered, and to allow for the fact that practitioners may not be available every week. In addition some part-time tutors are employed; there may be about four of these in the 1976/77 session.

Id. at 10.

107. There are presently ten exercises in advocacy, involving the direct examination of witnesses, cross-examination, pleas in mitigation of sentence, and the like. Instruction on these exercises is conducted through a demonstration of the procedure by a senior barrister before an actual judge, followed the next evening by the presentation of the same matter by students working in groups of ten with a barrister-instructor. There are six

While the bar has progressed in adopting the reforms recommended by the Ormrod committee, the Law Society first moved toward implementation, but has recently retreated. The Society had evidenced an intention to require a degree as an entry credential into the profession beginning in 1980, and originally agreed to the common professional examination to be held for the first time in 1978.¹⁰⁸ However, teaching for the common professional examination will be continued at the College of Law, rather than being entirely transferred to academic institutions, thereby leaving the way open for school-leavers to enter the profession. The Law Society has also expressed an intention to initiate a compulsory vocational course and a new final examination for all potential solicitors, followed by service under articles for eighteen months.¹⁰⁹

Thus, the current implementation status of the Ormrod committee's recommendations can be summarized as follows: First, the bar is in the process of transferring the academic stage of legal education to academic institutions, but the Law Society has abandoned this goal, at least for a time.¹¹⁰ Second, the vocational stage continues to be taught in professional schools with the Council of Legal Education having substantially reformed its vocational course and the Law Society leaving its course essentially unchanged. Third, only the bar has become a predominantly graduate profession. Fourth, articles and pupillage continue, as yet without major reform. Finally, aspiring barristers must still keep terms by eating the requisite number of dinners at their Inn.

D. Our Appraisal of English Legal Education

As noted at the beginning of this Section, while compiling this study we visited England to study firsthand the English educational process. Although our contact with the English system was limited, our impressions confirmed many of the conclusions that can be drawn from the previous material in this Section.

First, we were struck by the fact that, while we were looking to England for possible guidance for the improvement of Ameri-

writing exercises that teach drafting of pleadings through interaction with a barrister-instructor. Students are given a set problem and are required to prepare a draft before organizing into groups of ten to meet with their instructor for instruction and criticism. Finally, students make six daylong visits to courts in the London area. The judge meets with the students, sometimes before the day's docket, but routinely afterwards, to discuss points from the proceedings of the day. *Id.*

108. The Law Society, *The Training of Solicitors* (1976) (mimeograph manuscript).

109. *Id.* at 2.

110. Submission No. 3, *supra* note 82, at 17.

can legal education, certain English lawyers were looking to the United States for much the same purpose. This reference to American legal education is reflected to some degree in the report of the Ormrod committee¹¹¹ and even more so in other writings that find fault with English legal education.¹¹² But the perceived shortcomings of English legal education and the perceived advantages of American legal education became even more evident in the candid private discussions we held with many knowledgeable observers, including English lawyers responsible for professional legal training.

Why might some English lawyers look favorably on American legal education? The answer appears to be primarily because American legal education is *graduate* professional education, usually preceded by a bachelor's degree or at least three years of undergraduate university education. By contrast, England's first university degree in law is an undergraduate one; even then one can still become a barrister or solicitor without a university *law* degree or, in certain instances, without any sort of university degree.

The fact that American legal education is university based constitutes another attractive feature. Some observers maintain that American law students on the whole receive a higher caliber intellectual training in law, incorporating a greater breadth of disciplines and perspectives, than do their English counterparts.¹¹³ As has been repeatedly noted throughout this Section, one reason for the English failure to integrate law and law-related topics into the universities and the equivalent failure to unite university and professional training is the still-lingering mutual suspicion between "practicing" and "academic" lawyers. Given the results of that division in England, the university-based law school in the United States may represent a relatively superior reconciliation of the enduring conflict between practical and theoretical education. Some observers of English legal education also fear that the schools run by the Law Society and the Inns lack the resources to do their job well. One view is that, at their worst, the schools run by the profession in England are little more than cram courses.¹¹⁴

Visits to the schools and their related professional organiza-

111. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 28-30, 173-77.

112. See, e.g., B. ABEL-SMITH & R. STEVENS, note 24 *supra*; Gower, note 24 *supra*.

113. This view is supported to some extent by the Ormrod report and by Abel-Smith and Stevens, B. ABEL-SMITH & R. STEVENS, *supra* note 24, at 365-75.

114. *Id.* at 365-67.

tions and interviews with those responsible for the educational programs, supplemented by interviews with knowledgeable observers and our reading of the available literature as summarized above led us to the following conclusions: First, the facilities and resources of the schools run by the Inns and the Law Society are probably inferior to and almost certainly no better than those of the average American law school.¹¹⁵ Additionally, for most of the schools' history, the curricula have been forced into very tight examination-oriented schedules,¹¹⁶ and the problems of time and resources give the schools an atmosphere similar to bar review courses in the United States. Second, while the Inns of Court School of Law is making valiant efforts to become more than the above conclusion would suggest, it still seems severely limited by time and resources. The Inns of Court School of Law has made notable progress toward "practical" training since 1970, but probably offers no more than would be offered at an average American law school through courses in legal research, legal writing, and practice and procedure and through moot court and clinical programs. Finally, the English system of professional education is for all practical purposes no older than ours—its effective origins are in the last half of the 19th century.

In the aggregate we must conclude that it is unlikely that the school run by the Inns of Court is responsible for the alleged superior quality of English oral advocacy. Neither do we find the program at the College of Law run by the Law Society to be characterized by notable achievements or innovations that might profitably be adapted to American use.

What, then, of pupillage or articles of clerkship? Might they be the touchstone of the alleged superiority of the British practitioner? Our informants and the available literature agreed that pupillage and articles vary greatly in quality.¹¹⁷ While both

115. The best and most recent survey of resources and facilities is that of Wilson & Marsh, note 24 *supra*. The survey shows that university law schools and polytechnics depend almost entirely on governmental funding. There appears to be little funding for legal research, and the physical facilities of law schools are often inadequate. *Id.* at 248. The university law library holdings for Oxford and Cambridge in January 1974 were 165,000 and 88,000 items respectively. The next largest libraries were at the London School of Economics and at Belfast, each having approximately 40,000 volumes. It should be noted that individual colleges at Oxford and Cambridge often have their own law libraries and that there are law libraries in the University of London's law schools, Institute of Advanced Legal Studies, and School of Oriental and African Studies. *Id.* at 276.

116. For example, the preparatory course for part I of the solicitor's examination (in lieu of a university law degree) lasts one year. The part II course at the Law Society's College of Law is for six months.

117. See COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 60; Gower, *supra* note 24, at 153; Green, *supra* note 24, at 144; Hughes, *supra* note 24, at 307-08.

depend upon the intelligence, dedication, interest, and above all, the time of practitioners, there appear to be no reliable procedures for determining whether a particular practitioner possesses or applies the above characteristics with qualities or in quantities sufficient to the task. In certain instances pupillage and articles are no doubt excellent devices, but, with no effective quality controls over either, such a fortunate outcome is a random event.

At this point we must ask the question posed at the beginning of this Section: If neither the school run by the Inns of Court nor pupillage are the keys to the excellence that Chief Justice Burger, among others, has described as characteristic of English oral advocacy, then what facet of the English system does produce the exceptional advocates found by the Chief Justice?

Having eliminated the apparent and plausible answer of a superior legal education,¹¹⁸ we hypothesize that skilled English advocates are the product of a system of selection composed of formal and informal devices, including the following: First, no one has to become a courtroom advocate. Those whose personalities and skills are particularly suited for the printed word or the office can choose a separate career.¹¹⁹ Second, since England is a small country and the total number of barristers is modest by our standards, word-of-mouth selection of aspirants with oral skills may result in only the best qualified barristers being chosen. This selection may be especially true of the public school, "Oxbridge," route to a barrister's career.¹²⁰ Third, aspirants without potential advocacy skills may be screened out during the year currently required at the Inns of Court School of Law, or they may not find a place as a pupil of a practicing barrister. Even during the course of pupillage, impressions are likely to be formed (whether systematic training occurs or not), and one deficient in oral advocacy skills may be advised of that fact. Finally, and by far the most important, *barristers are hired by solicitors*. Eventually those who are effective will get the work or at least the best work. The

118. Still assuming that English advocacy is of high quality, we have considered only those facets of legal education that are clearly different from American legal education. It is, of course, possible that English legal education does a superior job at tasks identical to those in American legal education.

119. This, of course, is not to say that office specializations do not exist in the United States, but only that the specializations in England are more formally differentiated. Transfer between the two branches of the profession is possible in England, but rare. It should also be noted that solicitors are oral advocates in lower courts in England.

120. We confess that this is speculation on our part. We refer, of course, to the possibility of "old boy" networks where acquaintances extend from late childhood-early adolescence through Oxford or Cambridge and on into professional training.

deficient will not get court appearances or at least not "important" court appearances.¹²¹

Under our hypothesis Chief Justice Burger is half right. He is wrong in suggesting that English legal education is responsible for producing superior advocates, but correct in the sense that the system and process of specialization employed in England tends to minimize the number of less skilled advocates. The lesson to be learned is simple enough, although it is not a matter of curricula or courses. The answer is merely to provide that all trial attorneys be retained by other attorneys, rather than by clients, and make trial advocacy a specialized practice. The deficient practitioner will be weeded out in short order, assuming a sufficient number of competent advocates to go around, or at least shunted to minor courts on minor matters.

E. Conclusion

Our review of the history and recent developments in English legal education indicates that their system, rather than being proven by the test of time, has been characterized by often frustrated and failed efforts at reform. Certainly university legal education, dating as it does from only the last quarter of the 19th century, offers little that would be instructive or helpful for the reform of American legal education. Indeed, the English have had greater tension and difficulty with the ostensible conflict between practice and theory than we have had. Our university-centered law schools no doubt offer a more completely integrated professional legal education than any in England.

Furthermore, articles of clerkship, pupillage, and keeping terms have most likely endured because change in English legal education appears to be more difficult than in American legal education, not because their efficacy has been demonstrated.¹²² For example, the tradition of keeping terms at the Inns, no doubt attractive to anglophilic American lawyers, is often less than entrancing to one who must meet the requirement. Clearly, little substantive educational purpose has been served by the custom for several centuries.¹²³

121. COMMITTEE ON LEGAL EDUCATION, *supra* note 25, at 17. There is indeed some concern that this selection system is breaking down with the advent of legal aid. There may be sufficient cases now so that even the marginally competent advocate will obtain work.

122. *Id.* at 60.

123. This is not to say that keeping terms is entirely purposeless, but only that no substantive professional training is provided at the dinners. The Ormrod committee noted

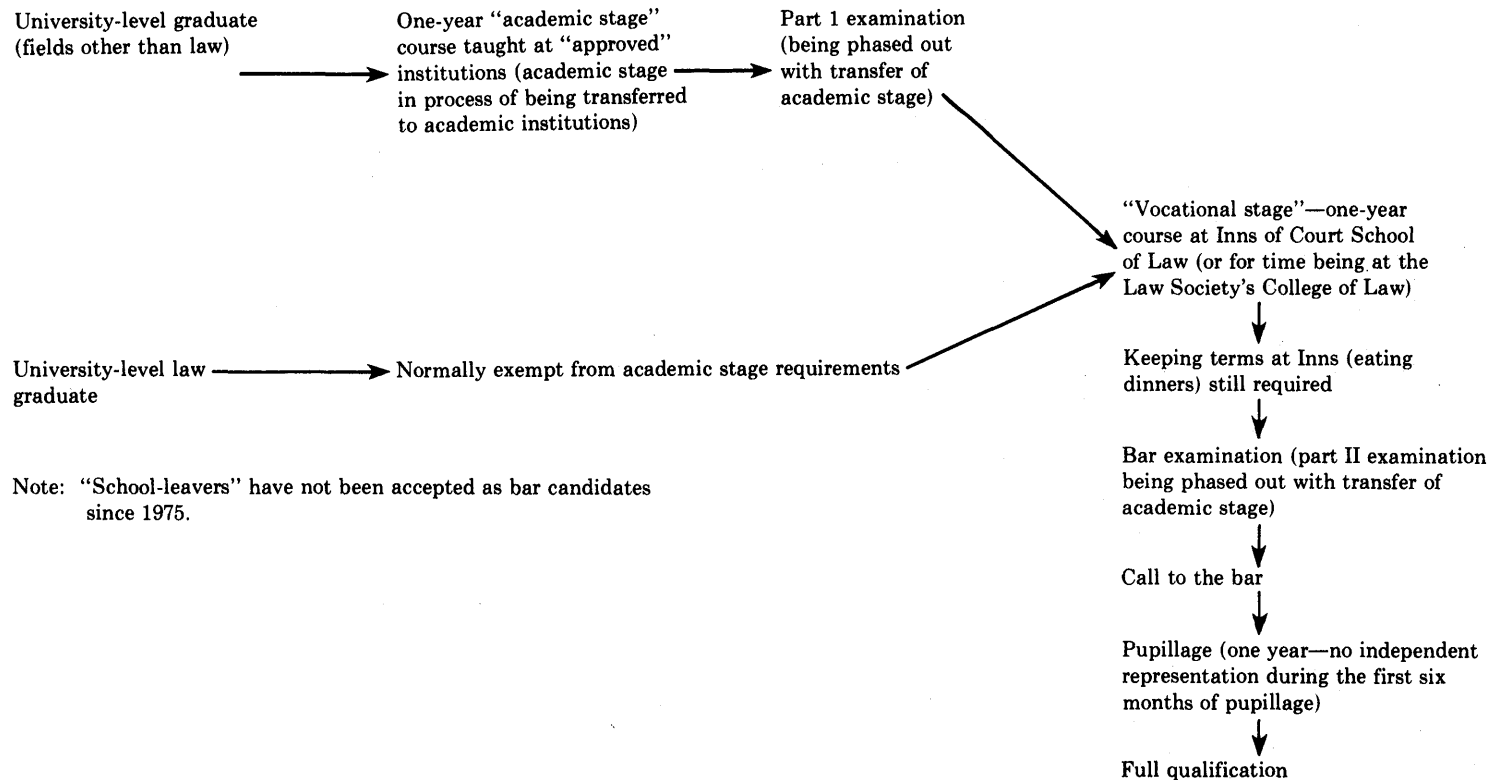
We trust that our brief review of English educational history more than adequately supports our isolated impressions derived from only a week's visit. Therefore, we reiterate our principal conclusion that little in English legal education offers a sure guide to the improvement of our own system, save for the suggestion that specialization breeds expertise—especially when one sort of specialist is hired by another, as when solicitors consult barristers.

the following possible benefits of keeping terms:

This tradition has received a good deal of satirical attention. Its purpose is to help the student identify with his Inn before he is called to the Bar, to get to know fellow students and practitioners, and to pick up some of the corporate spirit of the Inn. Dining in hall provides some opportunity for mootings (with benchers and members of the Inn taking part) after dinner, and for a limited number of other activities such as debates. Successive generations of students over a great many years have doubted the value of this tradition, but, as each generation has attained some seniority in the Inn, views have tended to change and the tradition has been kept up. It is difficult to evaluate it reliably. It may play some part in the process of identification and in laying the foundations of that corporate spirit which is a real and important characteristic of the Bar.

Id. at 83 (footnote omitted).

Educational Track for Barristers (1978)



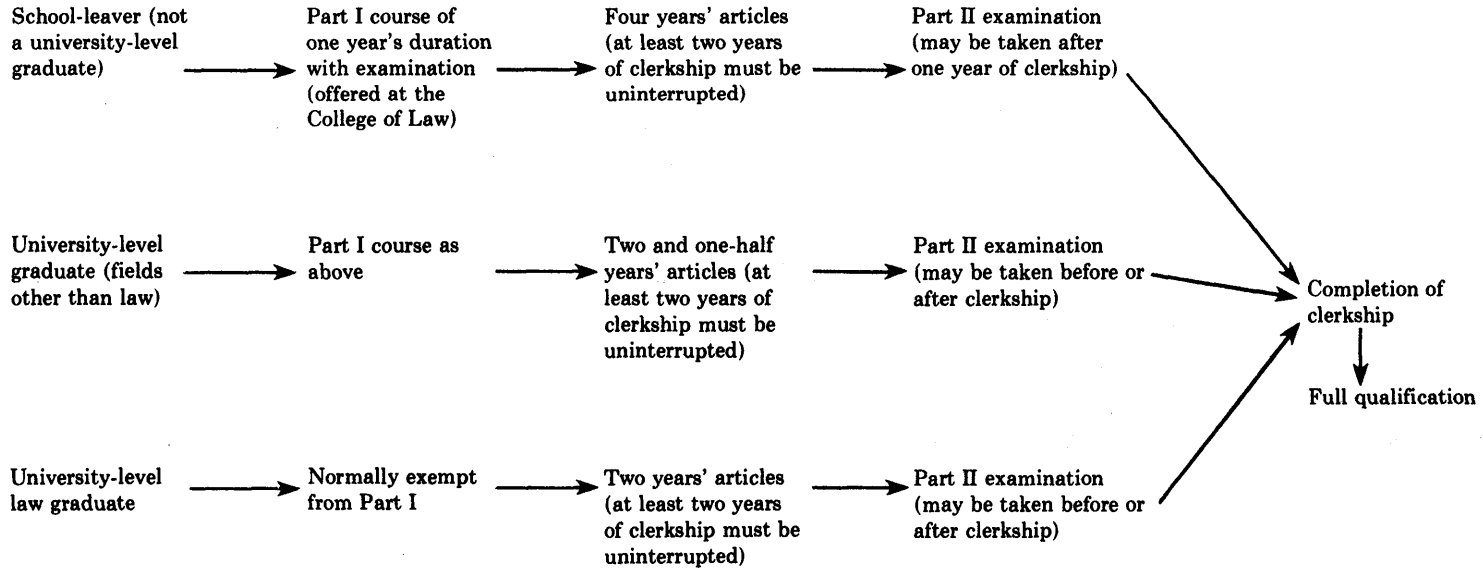
Note: "School-leavers" have not been accepted as bar candidates since 1975.

Educational Track for Solicitors (1978)

695]

BRIDGING THE GAP

793



Note: A six-month part II course is also offered at the College of Law.

SECTION V

EDUCATIONAL PROGRAMS OF BUSINESS, ACCOUNTANCY, AND MEDICINE: PERSPECTIVES FROM THREE SISTERS

A merely well-informed man is the most useless bore on God's earth. What we should aim at producing is men who possess both culture and expert knowledge in some special direction. Their expert knowledge will give them the ground to start from, and their culture will lead them as deep as philosophy and as high as art.¹

A. *Introduction*

Particularly in American Society, education has been seen as the pathway to achieve the requisite "expert knowledge" and "culture" thought typical of the "professional." The designation of "profession," used in the traditional sense as relating to the three learned professions of theology, law, and medicine, has been an objective of many occupations. A "professional" in this sense is more than a worker skilled in a particular field; he is one "set apart," possessing a special station in society by virtue of his education, culture, and practiced expertise in that field. Today the term "profession" is often applied less rigorously to include many occupations. This Section, however, will limit application of the term to those fields of endeavor that share all or most of the following characteristics, as outlined by the Roy—MacNeill study on accounting education:

Each renders essential services to society.

Each is governed by ethical principles which emphasize the virtues of self-subordination, honesty, probity, [and] devotion to the welfare of those served.

Each has requirements for admission to the profession which are regulated by law.

Each has procedures for disciplining those whose conduct violates ethical standards.

Each depends upon a body of specialized knowledge acquired through formal education.

Each has developed a language of its own, in its more sophisticated forms understandable only to the initiated.

[Each has] a requisite level of understanding and respect on

1. A. WHITEHEAD, *THE AIMS OF EDUCATION* 1 (1959).

the part of the public, or at least a knowledgeable segment of it.²

Measured by these criteria, business,³ accountancy, and medicine, as well as law, have become, or are emerging as, professions.⁴

It is not coincidental that the educational processes that have been and are being developed to train professionals in these fields have shared a similar evolutionary process.⁵ For each profession, this process began when individuals performed services to satisfy the social needs of others, developing thereby a modest body of knowledge which eventually grew to the point that it could be taught in some manner to others. At first this transmission of knowledge generally occurred in a preceptor-apprentice relationship, primarily because of the lack of any theoretical and organized framework from which the skills of the practitioner could be taught. As the body of knowledge for the developing profession expanded, however, theoretical principles assumed a more important role in the teaching of professional skills and began first to supplement, then to supplant, practical experience.

At this stage in the development of the professional education program, it became more feasible to systematically instruct the aspiring young professional in the traditional atmosphere of the classroom rather than exclusively in the practitioner's office. As a result, professional schools began to emerge. Initially such schools attempted only to systematize the practice-oriented training that apprentices ordinarily would receive. The forces of academe are powerful, however, and as professional schools were assimilated into the academic community, pressure mounted for a more scholarly approach to professional education. A rapidly expanding body of knowledge, combined with this pressure, yielded a greater emphasis on research and theoretical instruction that could more easily be measured by traditional scholarly standards. Curriculum demands on students grew stricter, and the length of professional schooling increased to produce graduate study requirements in some fields. Graduate schools in turn be-

2. R. ROY & J. MACNEILL, *HORIZONS FOR A PROFESSION* 31-32 (1967).

3. In this context, the term "business" is not meant to be defined in its broadest generic sense, but rather so as to include only those persons of management or executive level.

4. Theology, although a "traditional" profession, does not share the same economic and educational pressures as do business, accountancy, medicine, and law. A treatment of theological education is therefore excluded from this Section.

5. See R. ROY & J. MACNEILL, *supra* note 2, at 37-38. For a discussion of the historical development of American legal education, see Section III *supra*.

came hybrid versions of rigorous undergraduate professional programs, escalating still further the necessity of textbook study and classroom instruction. Teaching practical experience did not lend itself well to the classroom, and such instruction was increasingly sacrificed in light of an already overcrowded curriculum.⁶ Often at the instigation of growing professional organizations, testing standards for admission to the profession increased and postgraduate instruction requirements in the form of continuing education programs began to emerge. To a greater or lesser degree, the educational processes in business, accountancy, and medicine have passed through, or are currently undergoing, each of the above described phases.

A variety of forces in each case have combined to shape the educational programs in these professions. Each has engaged in a struggle to secure a properly professional identity. Desires within the professions for public recognition and prestige, for increased competence and greater knowledge in fields of specialty, and for autonomous control over training and certifying have been powerful forces, particularly among educators, to push professional education programs along the evolutionary track described above.

Developments discussed in this Section have recently emerged, at first timidly but then more confidently, that seem to challenge this traditional evolutionary process; such developments have been attributed by some to innovative daring on the part of professional educators. Despite educators' assertions that current trends in professional education are primarily a result of careful thought and experimentation generated by those within the profession, reality is not quite so simple. Forces extrinsic to the professions are having increasingly profound effects on professional education.

One result of the complex interrelationships between forces within and without the professions, some promoting traditional education programs and some demanding change, has been a lively discussion on professional education issues: the relative roles of theoretical versus practical instruction, curriculum length and design, teaching methodologies, financing of professional education, standards for admittance to practice, specialization, and continuing competency requirements, to name just a few.

6. There are some important exceptions, such as the clinical phase of medical education, but it should be noted that such practical experience is permitted only after completion of an extensive theoretical curriculum.

Although some important differences exist between the legal profession and those professions discussed in this Section, legal education faces many of the same issues as educational programs in the other professions.

Comprehensive examinations of educational trends in business, accountancy, and medicine are beyond the scope of the present study.⁷ Moreover, this Section will not attempt a direct and systematic comparison between legal education and the training processes in these other professions—the making of such comparisons is left to the reader. It is hoped, however, that by surveying the attempts by other professional education institutions to develop an educational program a better perspective can be gained to evaluate present trends in legal education.

B. *Education in Business*

Those who are well established and successful in the business community might rankle at the purist's hesitation to term the occupation of a businessman a "profession" even when the strict, qualifying criteria outlined in the introduction to this Section are considered. Nevertheless, compared to the long professional histories of law and medicine, it is only relatively recently that business has begun to emerge as a profession in the traditional sense.

As late as 1963 during the annual meeting of the American Association of Collegiate Schools of Business (AACSB), the Executive Director of the National Commission on Accrediting, which legitimates the AACSB in its business school accrediting function, conceded rather frankly before his distinguished audience of business educators that "the field of business is not considered to be a profession."⁸ Nevertheless, the director referred to his listeners as "professional people," and to their organization as having "much in common with professional organizations."⁹ The

7. For a more exhaustive treatment of these trends, see, e.g., AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *SCHOOLS OF ACCOUNTANCY: A LOOK AT THE ISSUES* (1975) [hereinafter cited as *SCHOOLS OF ACCOUNTANCY*]; J. BOSSARD & J. DEWHURST, *UNIVERSITY EDUCATION FOR BUSINESS* (1931); CARNEGIE COMMISSION ON HIGHER EDUCATION, *HIGHER EDUCATION AND THE NATION'S HEALTH: POLICIES FOR MEDICAL AND DENTAL EDUCATION* (1970); A. FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA* (Carnegie Foundation for the Advancement of Teaching Bull. No. 4, 1910); R. GORDON & J. HOWELL, *HIGHER EDUCATION FOR BUSINESS* (1959); F. PIERSON, *THE EDUCATION OF AMERICAN BUSINESSMEN* (1959); R. ROY & J. MACNEILL, *supra* note 2 (accounting education); Ebert, *The Medical School*, *SCIENTIFIC AM.*, Sept. 1973, at 139.

8. THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, *THE AACSB: ITS ROLE AND RESPONSIBILITY IN THE FUTURE* 12 (1963).

9. *Id.*

director's remarks evidence a then-current ambiguity in the professional identity of those connected with business and came at a time when business schools¹⁰ were still reacting to separate studies on business education commissioned by the Ford Foundation (Gordon-Howell study) and the Carnegie Foundation (Pierson study).¹¹ Both studies compared business schools to educational institutions in the recognized professions and called for significantly increased academic standards in the areas of curriculum, faculty, and research to improve the status of business among the professions and in the eyes of the public.

Nearly thirty years after the Gordon-Howell and Pierson reports, business educators are still struggling with many of the same issues that confronted them when the studies were conducted. Significantly, however, trends in business education have led business schools and their graduates toward a more professional image, in most respects trodding the familiar path that professional education programs in other fields have followed before. Although business in its generic sense does not fulfill all of the characteristics commonly attributed to a traditional profession,¹² it has to this point sufficiently fit the mold, with promise of further compliance in the future, so as to be legitimately termed a profession by many. As a brief examination of historical and current trends in business education will show, even the purist must allow that business is at least an "emerging profession."

1. *The history of business schools*

Particularly in its formative stages, business education differed from professional education in accountancy¹³ and medicine in that its subject matter was diffuse and ill-defined, lacking a foundation of primarily scientific or mathematical principles. Such indefiniteness of academic heritage was reflected in the diverse sources of support for the earliest business schools during

10. The term "business schools" refers both to undergraduate programs in business administration and graduate programs leading to a master's degree or doctorate in business.

11. R. GORDON & J. HOWELL, *supra* note 7; F. PIERSON, *supra* note 7.

12. For example, opportunities to enter the business world after graduation from business school are not regulated by law, as is the case in accountancy, medicine, and law. Moreover, there is no professional business organization paralleling the American Institute of Certified Public Accountants or local medical or bar associations that disciplines recalcitrant members for unethical or unprofessional conduct.

13. Although accounting was and continues to be an important part of the business school curriculum, it was only one part and did not fit into any integrated scheme of business education.

the late 1800's and the first quarter of this century.

Some business schools were established out of an interest to combine a social science emphasis in the traditional liberal arts curriculum with a practical approach to train students in business methods. The Wharton School, founded in 1881 at the University of Pennsylvania as the nation's first school of business, followed this pattern as did the Tuck School at Dartmouth. The President of Dartmouth, who significantly influenced the business school during its early years, felt that the first-year curriculum "should consist of certain courses in modern history, economic theory, political theory, anthropological geography, and modern language."¹⁴ The faculty was drawn from as many of the standard departments as the variety of courses suggests. Only in the second year did students begin studying subjects such as finance and business law that are today associated with the business curriculum.¹⁵

Such programs, however, were among the minority of early business schools. In other instances, members of economics departments with a practical business bent were instrumental in establishing schools of business.¹⁶ Still other business programs were derivatives of already established accounting courses. At least one business school was established as a result of the determination by a state society of certified public accountants that accountant aspirants should be better prepared to pass the certified public accountant (C.P.A.) examination.¹⁷

Although differences among the early programs existed, certain common characteristics were evident. Most programs were established at the undergraduate level. Only the schools at Dartmouth, founded in 1900, and at Harvard, established in 1908, were exceptions among the early business programs, the former requiring the senior year in college to be combined with one year of graduate school, the latter demanding two years of graduate study.¹⁸ Business programs generally were not independent departments at first, some not even having their own dean until years after their formation, but often fell under the auspices of another department such as that of Arts and Sciences.¹⁹

14. F. PIERSON, *supra* note 7, at 37-38.

15. *Id.*

16. One example is the establishment in 1898 of the business school at Chicago. *Id.* at 36.

17. This was the School of Commerce, Accounts, and Finance founded in 1900 at New York University. *Id.* at 36-37.

18. *Id.* at 38.

19. *See, e.g., id.*

Most important for an understanding of the development of business education programs is the early trend in curricula at these schools. Faced with the necessity of drawing sufficient numbers of students to their new programs, schools tended to offer technical business skills courses in lieu of instruction in the more traditional academic disciplines. Faculty members were recruited who had a decided practical orientation and emphasized skills courses, albeit at the expense of academic ties with the remainder of the university community. The Pierson study outlines the result of such a curricular direction:

While the emphasis on specific business practice helped business schools achieve a certain identity, it tended to isolate them from the rest of the academic community. As the number of courses in business skills increased, the proportion of the work devoted to more traditional disciplines fell.

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As business schools withdrew from the academic community, they endeavored to form increasingly close ties with business organizations. This two-way trend was mutually reinforcing, the one furthering the other. It was carried to its furthest extreme in the relationship between certain schools and societies of professional accountants. Indeed, it later became difficult to tell whether the accounting instructors in these schools were primarily practicing accountants who wanted to keep their hand in the teaching profession.²⁰

It is easy to understand why such was the case. Although the general feeling existed among many educators and members of the business community that more systematic training ought to be offered to those planning on entering business as a career, there was no consensus on how this should be accomplished. Lacking any established academic framework or theoretical basis for business instruction, educators who observed the specific skills their graduates ostensibly would need upon entering business quite naturally established close ties with the business "practitioner" and attempted to teach practical skills in the classroom. Thus, near the end of the first quarter of this century, the unmistakable orientation of most schools of business was a practical, perhaps even technical, approach to business education.

Although not a powerful force in business education during this period, the AACSB, founded in 1916, took root as the future

20. *Id.* at 40-41.

professional organ of American business schools.²¹ The association established minimum standards for member schools,²² but those standards had little impact until they were stiffened some years later. Still, the association played a valuable role as a forum for the discussion of ideas in business education, and later, with a larger membership and the official sanction of the National Accrediting Council to accredit business schools, the association would become a real force in the shaping of standards for professional education in business.

During the two decades including and immediately following World War I, the number of business schools exploded.²³ Student enrollment burgeoned, growing more than twice as fast as the also rapidly expanding collegiate enrollment.²⁴ Even with this expanded enrollment, however, business programs remained at first almost wholly at the undergraduate level,²⁵ although they attained more structural autonomy within the university than they had previously enjoyed.

Development of curricula lagged far behind the vast increase in numbers. Still lacking a sound academic basis, business schools were ill prepared to meet the numerical onslaught. One result was that new branches of curricula were instituted without adequate forethought, and new courses were developed without proper support materials such that, as the Bossard-Dewhurst study examining business education during this period tersely stated, "specialization in the business curricula runs riot."²⁶ Another observer, Leon C. Marshall, ventured that "within the field of technical business education there has often been such a proliferation of 'courses' that it is scarcely humanly possible that the content can be of university or professional-school grade."²⁷

Such commentators were fairly united in their criticism of the then-prevailing methods of business education. They called

21. J. BOSSARD & J. DEWHURST, *supra* note 7, at 263. See generally THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS: 1916-1966 (1966).

22. THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, *supra* note 21 at 11.

23. J. BOSSARD & J. DEWHURST, *supra* note 7, at 253.

24. *Id.* at 255: "Whereas the total student enrollment for colleges, universities, and professional schools in 1926 was two and a half times that in 1915, the total student enrollment in commerce in 1926 was more than six times that of 1915."

25. See F. PIERSON, *supra* note 7, at 43. Stanford joined Harvard in offering an exclusively graduate program in business. *Id.*

26. J. BOSSARD & J. DEWHURST, *supra* note 7, at 323.

27. F. PIERSON, *supra* note 7, at 44 (quoting THE COLLEGIATE SCHOOL OF BUSINESS 95 (L. Marshall ed. 1928)).

for a less technocratic approach to business education and a substitution of a broad academic background in related but traditional disciplines; for an increased emphasis on the capacity for independent thinking, clear expression, decisionmaking, and problem analysis; and for the realization that, with the professional coming-of-age of business, business schools should undertake to instill professional, moral, and ethical principles in their graduates. "Successful business management," concluded Bossard and Dewhurst, "demands adequate technical knowledge of business practice and procedure, but it is by no means certain that the undergraduate business school is the proper place for the acquisition of such knowledge."²⁸

Despite significant weaknesses in curricula during this period, several trends began to emerge in some business school programs that would point toward a fulfillment of many recommendations in the Bossard-Dewhurst study. In an attempt to better integrate disparate parts of the curriculum, business schools began to view preparation for business from a more functional approach and to establish a fairly uniform "core" curriculum consisting of business law, statistics, marketing, accounting, money and banking, and business or corporate finance.²⁹ Although this approach afforded a somewhat more cohesive program, these subjects remained primarily self-contained units, seldom crossing their own boundary lines to correlate. Coinciding with a more functional view of business was the increasing tendency to teach a "company-wide, managerial" orientation: marketing skills began to lose importance in favor of administrative skills such as the ability to make decisions and to view the broad perspective.³⁰

The viability of this broader approach demanded a new teaching technique. Dean Wallace B. Donham of the Harvard Business School supplied the needed resource in the case method of instruction. The theory behind the case method is simple. With the increasing number of business school graduates assuming responsible management positions, these graduates should be prepared to make upper-level management decisions. This decision-making process depends upon having a reasonable background in all fields of a business operation; however, because it would not be feasible to offer instruction in so many fields beyond a basi-

28. J. BOSSARD & J. DEWHURST, *supra* note 7, at 565.

29. F. PIERSON, *supra* note 7, at 47.

30. See J. BOSSARD & J. DEWHURST, *supra* note 7, at 114.

cally introductory level, emphasis should be placed on techniques for reasoning out solutions given a set of facts and circumstances rather than on specific technical knowledge. Hence, teaching materials and methods should simulate real problem situations in business and demand that the student use his background in the core subjects to reach a conclusion on what should be done. The case method rapidly spread in various forms to other business schools, both undergraduate and graduate, and began a trend toward viewing the business student less as a technician and more as an analytical problemsolver.

As educational institutions returned to normalcy after World War II, business schools enjoyed another period of increased patronage and prestige. Most business programs experienced a dramatic rise in enrollment, as many returning veterans saw in business the chance for economic success and in business education the way to accomplish that objective. The core curriculum at most schools was more uniform and accepted, consisting generally of accounting, economics, finance, management, marketing, and production.³¹ More graduate programs in business appeared, including a few offering doctoral degrees. The AACSB grew in membership, increased its standards for participants, and was recognized by most organizations, including the U.S. Office of Education, as the official accrediting agency for business schools.³² The pervading atmosphere at business schools was optimistic:

[S]pacious buildings arose to house the new programs, some heavily endowed and a number furnished with expensive equipment. Salary rates were perhaps no higher than in other branches of university life, but prospects for rapid promotion were often better and opportunities for lucrative consulting fees, generally greater. Many new appointments were made to business faculties, including some persons of the highest scholarly reputation. The word began to circulate in academic circles that business schools were on the move and that teaching at these schools had some real advantages over appointments in more static branches of university work.³³

Although business education had begun to flex its newfound academic muscles, a question remained: Were the proper muscles being exercised and in the correct way? Despite classroom tech-

31. F. PIERSON, *supra* note 7, at 51.

32. *Id.* at 52.

33. *Id.* at 50-51.

niques such as the case method, which tended to shift emphasis away from the technical to the analytical, almost religious devotion was paid to the core subjects, many of which were practitioner oriented. For some, business school was much too specialized, diverting attention too quickly away from the broadening liberal arts subjects businessmen needed in order to be "educated professionals." Others claimed more directly and less charitably that, despite movements to "academicize" business education, once the cosmetics were removed most programs remained essentially like those of trade schools. At the close of the 1950's, as the Gordon-Howell and Pierson studies indicate, business schools had the germ of professional education programs, but failed to meet the standard in several fundamental respects.

2. *Forces affecting business education*

Many of the questions surrounding business education at present are a result of overlapping and often conflicting interests espoused by groups exercising influence over the business education community. Particularly after the student activism of the 1960's, greater segments of the public have shed their unqualified acceptance of business as the ensign of American economic dominance of the world. The profit motive largely has lost its enshrined position, and business leaders increasingly are expected to use the massive financial resources of American business to promote social causes. The business school is a natural focus of attention by those seeking to alter the traditional, pecuniary outlook of businessmen.

Government has also pressured business, and thus indirectly business education institutions, to assume a more socially aware perspective. The growth of government on all levels has created a demand for managers trained not for private enterprise but rather for public organizations. Business schools find increasingly that a significant number of their graduates enter public service and must be trained for the sometimes peculiar demands of government organizations.

Business leaders often perceive that education in business is too theoretical and does not prepare the graduate for the nuts-and-bolts problems he must face once he begins working.³⁴ Many businessmen would like to see both increased emphasis in busi-

34. *E.g.*, THE CONFERENCE BOARD, ARE TODAY'S SCHOOLS PREPARING TOMORROW'S BUSINESS LEADERS? 6 (1974).

ness schools on communication skills and an integration of newly developing tools of management, particularly practical application of the computer.³⁵ Perhaps the most uniform desire by businessmen is that business students receive a broader and more general education in lieu of the often specialized, theoretical training students receive in one facet of management education.³⁶

Members of the academic community are not always uniform in their attitudes toward business education. Business school faculty members, sometimes disassociated from direct contact with the pragmatically oriented business world, generally exercise tremendous influence in shaping business programs in a traditionally academic mold. Such faculty members characteristically maintain that, measured by standards of professional education in other fields, business education should allow for a degree of specialization as the body of knowledge through research expands in the various core curriculum subjects. On the other hand, college administrators often have no informed opinion on the intrinsic merits of academic versus practical education for business students; however, as budgets tighten and sources of funding shrink, new programs are discouraged and potential financial assistance from big business on condition of a more practically oriented curriculum assumes greater attractiveness.

3. *Trends in business education*

Although each of the forces mentioned above has affected the recent development of business education, the most successful of the interest groups appears to be the business educators. Business schools have succeeded in upgrading their academic image, as business programs have increasingly assumed the label "professional school" and implemented all the attendant academic trappings. Two trends in particular emerge from the continuing effort to academicize business education. First is the unmistakable move toward *graduate* education in business with a corresponding emphasis on academics instead of practical training. The second and related trend, reflective of earlier attempts to train the business graduate not as a technician but as a decisionmaker, is toward a broad managerial outlook not restricted to private enterprise and not dominated by any one subject or discipline.

The trend toward graduate business education can be illus-

35. *Id.* at 8-9.

36. *Id.* at 20.

trated by examining information outlining programs in graduate business study published by the Educational Testing Service. Among schools that reported during both the 1972-1973 and 1976-1977 academic years, in 1972-1973 only forty-six schools required two years of graduate study and only sixty-six universities offered the Ph.D. in business.³⁷ Four years later, while the number of schools requiring two years of graduate business education remained constant, the number of schools offering a Ph.D. degree had risen to eighty-eight—an increase of nearly thirty percent.³⁸ Significantly, eighty-five additional schools responded to the 1976-1977 study and reported operating a graduate program in business. Thirteen of these schools required at least two years of graduate study, and eighteen offered the Ph.D. degree.³⁹

The nature of such graduate programs in business fits the traditional mold of academic programs in all the recognized professions. Graduate schools of business exercise a significant degree of independence over internal affairs such as faculty hiring and curriculum development. Standards for admission have increased; no particular undergraduate major is preferred, but the prospective student must have demonstrated sufficient academic qualifications and maturity to matriculate in a demanding graduate program. Surer now of the intrinsic worth of graduate study in business, business schools have liberalized the opportunities for joint degrees with other graduate programs.⁴⁰

The instigation and expansion of graduate study in business is indicative of an educational move away from the practitioner approach into the academic arena, with its tendency to stress theory at the expense of practice. As one business executive has noted:

There appears to be a growing conflict between the increased sophistication and theoretical emphasis of the academic institutions, and the demand for pragmatic and realistic actions by managers in the business world. More and more, college faculties are being staffed with theoretical, Ph.D.-level professors, who stress analysis of complex management systems and decisions with the tools of operations research, quantitative

37. GRADUATE BUSINESS ADMISSIONS COUNCIL, PROGRAMS OF GRADUATE STUDY IN BUSINESS: 1972-73, at 7-12 (1972).

38. ADMISSION COUNCIL FOR GRADUATE STUDY IN MANAGEMENT, GRADUATE STUDY IN MANAGEMENT 27-35 (1976).

39. *Id.*

40. Compare *id.* with GRADUATE BUSINESS ADMISSIONS COUNCIL, *supra* note 37, at 7-12.

decision-making models, and Keynesian economic theory. As a consequence, the young graduate is oriented toward executive-level decision making, and has a very poor grasp of the realities of the day-to-day business problems faced by the typical manager.⁴¹

The emphasis on executive-level decisionmaking, which this business leader and many others find distressing, hints at the second major trend in business education: the attempt to provide the graduate business student with a broad managerial perspective that includes the public as well as private sector and that finds its roots in a more integrated, interdisciplinary curriculum. This trend is an outgrowth of the earlier development of the case method of instruction. In light of increasing public and governmental pressure for business schools to train other than entrepreneurs for private business, and also in response to the number of graduates entering the public sector in a managerial capacity, many business schools have broadened their orientation to encompass education for administration of public organizations as well as business organizations. Indicative of this trend is a shift in terminology surrounding current education in business. Some business schools have changed their names to the impliedly broader label "School of Management."⁴² The Educational Testing Service has altered the title of its publication describing graduate business programs from *Programs of Graduate Study in Business* to *Graduate Study in Management* in order to include programs in public administration and other disciplines that are nonetheless incorporated under the umbrella of the business school.

Such a change in orientation and terminology accentuates an earlier shift in curricular perspective away from the domination of business instruction by one discipline, such as accounting, toward an integration of many subjects. A study of business education in the 1970's conducted by the Illinois Office of Public Instruction concluded: "Schools of business are moving toward an interdisciplinary approach and the softening of strict departmental lines in an attempt to improve effectiveness of instruction, make more efficient use of personnel, eliminate subject matter duplication, and avoid proliferation of courses and programs."⁴³

41. THE CONFERENCE BOARD, *supra* note 34, at 6.

42. Smith, *A Dean Looks at Schools of Professional Accounting*, MASS. CPA REV., May-June 1976, at 22.

43. OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF ILLINOIS BUSINESS EDUCATION FOR THE SEVENTIES 53 (1972).

The typical graduate business curriculum attempts to achieve better subject matter integration with the framework of core subjects, a field of concentration, and elective courses. Most first-year courses in a Master of Business Administration (M.B.A.) program are required and form the core of the student's business training. Second-year courses are largely elective, and students are encouraged to concentrate in one particular area, using the remainder of their electives to obtain a smattering of exposure in other related fields. It is hoped that this system will provide adequate coverage of the expanding body of knowledge relevant to business and at the same time will allow the student the intellectual challenge of specializing to a degree in a particular area. At the same time, a greater emphasis has been placed on quantitative methods in the business curriculum, and, as a result of the desire to teach communication skills and social awareness, the behavioral sciences have assumed a position of importance in most graduate programs.⁴⁴ The *raison d'être* of graduate business education, however, has remained constant and is rooted in the grooming of graduates to fill decisionmaking positions in business. The brochure for one graduate school of management describes its M.B.A. program unabashedly as "a professional educational program for potential business executives" and proclaims that "those being trained will follow careers as entrepreneurs, managers, or specialists."⁴⁵

Related to the curricular changes that business education is undergoing are the increasing pressures on management personnel in business to be competent in growing numbers of fields and to keep pace with current developments in economics, finance, management theory, and business technology. These pressures have resulted in an increased number of continuing education programs for business executives. Such programs take the form of in-house seminars, national conferences, and traditional graduate school courses, to name just a few, and are often administered by corporations themselves for executives who show promise.⁴⁶

44. Smith, *supra* note 42, at 22.

45. BRIGHAM YOUNG UNIVERSITY GRADUATE SCHOOL OF MANAGEMENT, 1976-78 CATALOG (Brigham Young University Bull. Vol. 73, No. 5, 1976).

46. The success of such programs in keeping executives current and in opening avenues for promotion can be interestingly compared with another form of "continuing education": the night school M.B.A. program. Most night school enrollees work full time during the day and endure an extremely demanding schedule for three or four years in order to increase their knowledge of business management and improve their chances of promotion with their current business employer. The results of at least one study, however, indicate

Despite the efforts of business educators to make the study of business more academic, rigorous, and comprehensive, there is, in the opinion of many, a limit to the effectiveness of the classroom in teaching the prospective businessman about business. Most business leaders look to business schools to provide graduates with certain basic tools that will be useful when the graduates begin work, but they also realize that most of the necessary practical expertise and sound business judgment will come only through work experience.⁴⁷ Even academicians admit the limitations of graduate study in business. One professor of business conceded at a conference of the AACSB that “[n]o one . . . has expected education for business to take the place of experience or apprenticeship.”⁴⁸ That thought, however, even if believed by most, has not prevented the inexorable movement of business education into traditional academe—a common characteristic of all developing fields of professional education.

C. *Education in Accountancy*

Accountancy already meets most of the standards to qualify as a traditional profession. The accountant⁴⁹ renders essential services to society by possession of certain definable and measurable skills. Professional ethical standards are espoused by accountants, and the requirements for public practice are regulated by law. During almost the entire history of their area of service, accountants have relied upon a specialized body of knowledge, usually acquired by formal education, and have developed their own language of art to deal with accounting questions.

Still, for much of the public, whose general recognition is

that going to graduate business school part time does not allow the part-time graduate the same promotion and remunerative rewards that a full-time M.B.A. graduate achieves when newly hired by the same business organization. Siegel, *The Night-School MBA: Long Investment, Low Return*, MBA, May 1976, at 44. The primary reason appears to be that the part-time graduate has become stereotyped by his employer as one without a bona fide advanced degree, even though he may have attained the same skills that a full-time M.B.A. student has mastered. *Id.* at 45-46. Some night business schools also bear the weight of employer skepticism regarding academic excellence. Part-time graduate education in business appears to be most effective when instigated by the business employer for the executive. For a brief comparison with night law school programs, see Section III, notes 76-78 and accompanying text *supra*.

47. See, e.g., THE CONFERENCE BOARD, *supra* note 34, *passim*.

48. THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, *supra* note 8, at 43.

49. Although there are many different fields within accountancy covered by the generic term “accountant,” some of which are separately certified, for simplicity the term “accountant” will apply to the certified public accountant unless otherwise indicated.

necessary as the final approval for professional status, what an accountant does is largely a mystery. High school courses in accounting are often classed as vocational instead of college preparatory, and many of the uninitiated public are unaware of the strict requirements an accountant-aspirant must satisfy before legally being allowed to practice. In the words of one accounting educator, "almost everyone recognizes the professions of law and medicine, while the converse holds for the recognition of accounting. We are the least-recognized profession."⁵⁰ Even some accounting educators might question the correctness of the designation profession.⁵¹

Accountant-aspirants appear to be undeterred by a possible ambiguity in their future professional status, however. The sense that a bright and financially secure future awaits successful graduates of accounting programs during years of occupational uncertainty has been sufficient to lure increasing thousands into the field. A recent survey conducted by the American Institute of Certified Public Accountants (AICPA) revealed that the supply of accounting graduates receiving either a bachelor's or master's degree in 1976 was nearly double that of five years before.⁵² Such a numerical surge followed closely on the heels of similar spectacular growth during the preceding decade.⁵³ Although numbers alone do not establish a profession, they often illustrate the existence of significant pressure to move in that direction.

Education in accountancy is also on the move, and public awareness of the professional aspirations of accountants is correspondingly on the rise. Poking fun at hackneyed, popular conceptions of the accountant, a brochure explaining a combined bachelor's and master's program in accountancy takes an uncompromisingly affirmative view of the progress toward professional standing:

Accountants have laid aside their green eyeshades, have stepped down from their high stools in the remote corner of the chilly back room. Their front-and-center positions in the busi-

50. SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 63.

51. *Id.* at 12-13.

52. American Institute of Certified Public Accountants, *The Supply of Accounting Graduates and the Demand for Public Accounting Recruits 7* (Spring 1976) (annual AICPA survey). For the growth in the number of C.P.A.'s from 1930 and a projected figure for the end of the 1970's, see THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, *DESIGNING A BLUEPRINT FOR PROGRESS—EDUCATION FOR BUSINESS AND ADMINISTRATION 25* (1971) (proceedings of the AACSB Annual Meeting and AACSB Assembly).

53. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *ACCOUNTING EDUCATION, A STATISTICAL SURVEY, 1972-73*, at 59 (1974).

ness world are evidenced by the clamoring demands for their skills, by their emergence in executive ranks on every hand, by the increasing insistence of employers and colleagues that their education prepare them to meet the demands of today's world of sophisticated technology and intricate interconnections.⁵⁴

Viewed particularly from the perspective of developments in its educational programs, accountancy is at least a rapidly emerging profession and, for the purposes of this study on legal education, is one of the most interesting and dynamic.

1. *The history of accountancy education*

The historical development of educational programs in accountancy is inextricably tied to that of the business school. Thus, many of the developments outlined in the subsection on the history of business education also apply to accountancy and will not be repeated here, except as they may be particularly germane to an understanding of present trends in accountancy education.

As with skills necessary in the professions of law and medicine, basic accounting skills were originally acquired through the master-apprentice relationship.⁵⁵ Unlike legal and medical education, however, which early institutionalized their instruction programs in schools and universities, accountancy education was not formalized so early—the need did not develop until later.

Until the latter part of the 18th century, most businesses were sole proprietorships with only modest financial recordkeeping needs, and individuals could generally manage their own private financial affairs. But the development of the large corporation, as well as the institution of the federal income tax in 1913 with its subsequent complicating additions, irrevocably altered this situation.⁵⁶ Increasingly, those with accounting expertise became indispensable.

54. Brigham Young University Graduate School of Management, *Take Five for Accounting* (updated brochure describing the school's Institute of Professional Accountancy).

55. Posey, *Professional Schools of Accountancy: A Promising Alternative*, *MANAGEMENT ACCOUNTING*, Jan. 1976, at 15. "Great Britain, considered the primary origin of accounting in the United States, still retains the 'articled clerk' approach to becoming a chartered member of the profession. It is probably significant, however, that academic accounting education is becoming more widely accepted in Europe." *Id.* at 16 n.4. An interesting parallel exists in this respect in English legal education. The apprenticeship component of a solicitor's or barrister's education has recently undergone a critical reexamination, and English legal educators are suggesting a more rigorous academic approach to legal education. See generally Section IV, *supra*.

56. F. PIERSON, *supra* note 7, at 358-59.

It was at this point that accountancy started in earnest its long and close association with business schools. Almost without exception accounting formed a consistently important part of the business school's curricular foundation. As the Bossard-Dewhurst study of business schools noted some time ago, "[a]ccounting is usually the first 'business' subject to be introduced in college curricula. In fact, to many persons accounting stands in a peculiar sense as the Alpha of business education."⁵⁷ Particularly during the 1930's and 1940's, "often referred to as the period of 'unquestioned supremacy' of accounting in schools of business," accounting educators helped to organize many business education programs.⁵⁸ A natural result of such organizational efforts was the exercise of considerable influence by the accounting faculty over educational policies of business schools, ensuring for accounting a central role in most business studies.⁵⁹

Such control over the curricula at many schools of business, however, did not inspire innovation in accountancy education. The Pierson study on business education observed that

[p]rior to the mid-1930s, development of theory and practice in the art of accounting was based largely upon expediency. . . . The theory which evolved was neither uniform nor consistent. Procedures and technical aspects of accounting were stressed while basic concepts were neglected. It is not surprising, in view of this emphasis upon techniques, that students of accounting prior to the mid-thirties became masters in "how-to-do-it" with limited understanding of the "why" behind accounting processes.⁶⁰

Beginning in the 1930's, the American Accounting Association (AAA), formed as an organization of accounting educators under another name some years before,⁶¹ attempted to establish a consistent, theory-based procedure for issuing financial reports by publishing a set of uniform accounting principles. Although this statement and a subsequent monograph published under AAA auspices were ultimately important in assisting to incorporate the "why" of procedure into the accounting curriculum,⁶² the effect was not immediate. Partly as a result of a dearth of published

57. J. BOSSARD & J. DEWHURST, *supra* note 7, at 390.

58. Posey, *supra* note 55, at 16.

59. *Id.*

60. F. PIERSON, *supra* note 7, at 360.

61. The organization was founded in 1918 as the American Association of University Instructors in Accounting.

62. See F. PIERSON, *supra* note 7, at 360-61.

material on accounting theory, and partly in response to procedure-oriented state certification requirements, improvements in accounting programs through the 1940's consisted largely of changes in techniques.⁶³

A variety of factors have combined in the two decades following this period to dislodge accounting from its once unchallenged position of superiority in the business school. The first has already been noted: a complacency on the part of many accounting instructors toward a procedure-oriented educational approach and toward accepted but increasingly outdated texts, both of which worked to calcify many accounting curricula through much of the 1950's and in some cases even into the 1960's.⁶⁴ New subjects essential to the modern practice of accounting such as computer sciences, operations research, and quantitative methods entered the business curriculum but were not incorporated into accounting programs. Accounting educators thus allowed subject matter related to accounting to be diffused into other departments and thereby gradually permitted a dilution of their own influence on the direction of the business school.

One of the most important factors in the decline of accounting within the business curriculum was the issuance in 1959 of the Gordon-Howell and Pierson reports on business education.⁶⁵ Both reports criticized the undue technical emphasis in business education. As a result, business schools began to emphasize the development of analytical and problemsolving abilities required for making upper-management decisions. Curricula were gradually broadened to embrace the social sciences, and specialization in any one subject area, to the exclusion of a broad background in all disciplines related to an understanding of business management functions, was strictly discouraged. Curriculum decisions were generally made by the entire business school faculty, which by this time was less dominated by accounting professors and thus was less inclined to afford accounting programs any special priority. The Gordon-Howell study concluded that because the number of accounting courses students tended to take left insufficient time for more general business-related courses, "under no circumstances should the work in accounting consti-

63. *Id.* at 364.

64. See Buckley, *A Perspective on Professional Accounting Education*, J. ACCOUNTANCY, Aug. 1970, at 42-43.

65. R. GORDON & J. HOWELL, *supra* note 7; F. PIERSON, *supra* note 7. For a more complete treatment of the effects these reports had on business education programs, see notes 11, 37-48, and accompanying text *supra*.

tute more than twelve hours beyond the elementary course."⁶⁶ For a discipline such as accounting that requires extensive instruction to master theory and practice, this recommendation was a destructive blow.

The rapid expansion of the M.B.A. degree in the 1960's, also precipitated in part by the Gordon-Howell and Pierson studies, further undermined the importance of accountancy in the business school. M.B.A. graduates were trained to move into management positions in which they would be required to make decisions based not on self-generated financial reports but on data prepared by accountants. It was neither necessary nor considered particularly desirable for a graduate student in business to specialize in accounting. Schools of business moved to consolidate their graduate programs to the Master of Business Administration, and, as the title indicates, administration was emphasized at the expense of accounting. As was noted previously, some schools of business made the trend even more apparent by changing their names to Schools of Management.⁶⁷ The result of this continuing trend in business education, in the words of one accounting educator, is that there has been "a decline in the effectiveness of professional education for accounting" and that "what we are getting in the way of accounting education is not truly adequate for professional preparation."⁶⁸

2. *Forces affecting accountancy education*

Accounting educators have not been able to form their own policy in blissful isolation. Throughout its historical development, the field of accounting has been subject to influences from various special interest groups, both within and without its ranks, that have helped to shape its educational programs. Pressures from these groups have been intensifying in recent years.

One group applying pressure is the public. As public awareness of the role of the accountant has risen, expectations have also increased. Because complex tax laws make personal money management of even modest investments by laymen nearly impossible, the individual is forced to entrust a certain control over his funds to the accountant. Understandably the individual demands a high standard of professionalism and competence. Exactly how the accountant is educated, however, is not of much concern to the private citizen; the public simply wants a good end product

66. R. GORDON & J. HOWELL, *supra* note 7, at 214.

67. Smith, *supra* note 42, at 22.

from the educational system.

Other groups are more directly interested in the educational process itself. Students generally want to be qualified to practice upon graduation. Customarily students are anxious to graduate as quickly as possible and begin earning money in practice, a refreshing change after so many years of paying a university for the privilege of solving accounting problems, but they are often unaware of precisely what achievement of that objective entails. Likewise, accounting firms desire a well-trained and bright product, but are often willing to offer substantial in-house training to new employees if they can be recruited after just a bachelor's degree has been earned.

Many accounting faculty members, however, have different designs. They view a longer and more professional program in accounting education as a means of upgrading the prestige of the profession, the educational institution, and their own faculty positions. They seek autonomous control over curriculum, faculty hiring and tenure, and the student product—rescued from the sometimes unwelcome direction of business school faculty. Business school deans, on the other hand, often see in such tendencies a dangerous trend toward a separate school of accountancy that in many cases would seriously undermine their business programs. Although business schools have moved toward emphasizing training for management decisions, accounting remains as a critical building block and analytical tool in the process. University administrators, sometimes quite oblivious to the possibilities for turmoil within the business school, worry primarily about the costly financial implications of allowing accounting educators a freer, more autonomous reign in developing a lengthier and more professional program in accountancy.

It is against such a backdrop of conflicting interests and pressure groups that current trends in accountancy education are emerging.

3. *Trends in accountancy education*

The overriding trend in accountancy education appears to be the drive to have the accounting field recognized and accepted as a peer to the traditional professions. The Roy-MacNeill study sponsored jointly by the Carnegie Foundation and the AICPA⁶⁹ made its priorities explicit early in the introduction:

68. SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 43.

69. R. ROY & J. MACNEILL, *supra* note 2.

The most important and significant aspects of a CPA's services to his clients and to the public cannot be defined as knowledge, nor even as experience, but must be described by more elusive terms: wisdom, perception, imagination, circumspection, judgment, integrity.

. . . Without [such qualities] a CPA can be nothing more than a technician, regardless of the scope of his knowledge; possessing these attributes plus requisite knowledge, he is a *professional*.⁷⁰

Beginning with such a statement of policy, almost patriotic in its call to arms, the study consistently frames its criticisms of accountancy education and its recommendations for improvement in terms of what is necessary to develop "inherent qualities worthy of the accolade professional."⁷¹

The Roy-MacNeill study found modest indicia that the status of accountants was improving. A statistical survey showed that clients were beginning to recognize the accountant as capable of performing a wider variety of services, and the average public accountant's practice was thus broadening in scope.⁷² Further, and more importantly, the survey discovered an upward swing in the amount of education obtained by the average accountant. In public accounting firms the incidence of bachelor's degrees was substantially higher, the number of graduate degrees had modestly increased, and a larger percentage of the staffs of accounting firms had earned the C.P.A. designation than in previous years.⁷³

Such a bow to accountants for making beginning steps toward professionalism, however, did not prevent the authors from recommending comprehensive changes in curricular direction. The report made several specific suggestions for improvement. The rigor of accounting education should greatly increase, the report stated, surpassing the "how-to-do-it" phase and replacing it with "programs of greater breadth and sophistication" emphasizing "conceptual understanding in preference to procedural skill."⁷⁴ The common body of knowledge for accountants should not only contain heavy concentrations of accounting courses, but also include offerings from the humanities, economics, the behavioral sciences, law, mathematics, statistics, probability, and the

70. *Id.* at 1 (emphasis in original).

71. *Id.* at 2.

72. *Id.* at 9-10.

73. *Id.* at 10.

74. *Id.* at 2-3.

functional fields of business.⁷⁵ Research in accounting should significantly increase.⁷⁶ Professional development should both be a major goal for practicing accountants and be pursued through continuing education programs in new techniques and theoretical advancements. Finally, and most importantly for current trends in accountancy education, the study concluded that "preparation for public accounting should come to include graduate study."⁷⁷

The Roy-MacNeill recommendation that accountancy education should be encouraged on the graduate level was endorsed by the AICPA in 1969.⁷⁸ The question remained, however, how to incorporate graduate study into the accepted accounting education program. With sights firmly set on the goal of making accountancy a more recognized profession, the AICPA issued an unequivocal answer: the professional school of accountancy.⁷⁹

The AICPA has forged ahead along the route toward establishing professional schools, forming in 1974 a Board on Standards for Programs and Schools of Professional Accounting that was directed "to identify those standards that, when satisfied by a school, would justify its recognition by the accounting profession. Particularly, attention should be given to the criteria for the school's curriculum which would be appropriate for a professional program in accounting."⁸⁰ The board was not concerned with setting standards for all levels of accounting personnel; its sights were set much higher. "The basic consideration," its final report stated, "is to develop educational programs of a professional nature for those accountants whose career aspirations require the highest degree of expertise."⁸¹ The move toward professional schools of accounting quickly gained vociferous support, particu-

75. *Id.* at 11-21.

76. *Id.* at 3, 5-6. Ever conscious of how accounting measures up to the traditional professions, the authors conclude that "[i]n this subjective attribute of a profession, accounting does not compare favorably with other fields." *Id.* at 3.

77. *Id.* at 5.

78. THE AMERICAN ASSOCIATION OF COLLEGIATE SCHOOLS OF BUSINESS, *supra* note 8, at 27.

79. AICPA *Endorses Professional Schools of Accounting*, J. ACCOUNTANCY, Sept. 1973, at 21:

The Institute strongly endorses any action which provides . . . strong professional programs. As one way, and perhaps the preferable way, of achieving an increased emphasis on the professional dimension of the discipline, the Institute endorses and encourages the establishment of professional schools of accounting at qualified and receptive colleges and universities.

80. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, BOARD ON STANDARDS FOR PROGRAMS AND SCHOOLS OF PROFESSIONAL ACCOUNTING 1 (1977) (final report).

81. *Id.*

larly among accounting educators, and equally ardent opposition, notably among business school and university administrators. The die was cast, however, and during the past several years discussion about important trends in accounting education has centered on the professional school of accountancy.

Professional schools can take any number of forms. At one end of the spectrum is a completely separate school, comparable to a school of law, having its own administration and faculty and enjoying autonomous control over virtually all academic affairs. At the other end is a school formed from a department within the school of business that possesses minimal control over its own affairs, in reality a simple change in name from a present program in accountancy to a "professional school" with a few additional prerogatives. In between these two extremes is the professional school like the Institute of Professional Accountancy at Brigham Young University, a division which joins with the university's Master of Business Administration and Master of Public Administration programs under the umbrella of the Graduate School of Management. Such a professional school has a significant amount of control over its own academic affairs.

In view of the long and, observing the large number of qualified practicing accountants, relatively successful operation of accounting programs within schools of business, it can be legitimately asked: Why establish professional schools of accountancy? Several answers are possible, some of which have already been suggested. Accounting educators are increasingly under public scrutiny as the role of accountants becomes more visible in the society; yet, as business school programs have evolved, accounting has lost its position of preeminence and control. Under such circumstances, accounting educators have perceived a loss of prestige and professional identity. A professional school is viewed by many as a promising method to regain control of important academic functions and to restore and further build the image of accountants.

As a result of increased control over faculty hiring and curriculum development, some see in a professional school of accountancy the opportunity to breach a perceived gap between researchers, teachers, and practitioners. One accounting educator characterizes the problem: "We are in the happy situation of having a virtual explosion of research in accounting. We are in the unhappy situation of not having much, if any, of that research implemented. . . . Instead of research and practice reinforcing

one another . . . , they are going in separate directions."⁸² At least one professional school of accountancy envisions a close partnership in teaching courses and joint research projects between professors, who do much of accounting research, and practitioners.⁸³

Some accounting educators feel that an adequate accounting curriculum, covering the essentials of accountancy, as well as basic verbal, writing, and behavioral science skills, simply cannot be squeezed into a four-year undergraduate program.⁸⁴ They often point to extensive education programs administered by the larger accounting firms as indicative of the poor performance of present accounting curricula. Many students newly graduated from college in accounting and hired by a major accounting firm find that they are only qualified to go back to school, this time administered by a firm instead of a university.⁸⁵ If nothing else, it is felt, a professional school would usually increase the length of the curriculum by combining some graduate with undergraduate study, thus affording more of an opportunity to cover needed material. It will be a matter for observation as professional schools increase in number, however, how much of an additional year or two of study will actually be devoted to accounting courses. It is possible that management training, social and behavioral science, and communication skills characteristic of the

82. SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 59.

83. Skousen, *Accounting Education: The New Professionalism*, J. ACCOUNTANCY, July 1977, at 56-57:

To assist in the professional development of faculty and students [at Brigham Young University's Institute of Professional Accountancy] there is a real need for a partnership to be established. . . . In short, the gap between academia and practice needs to be bridged. The partnership I have in mind involves such activities as

- 1 Faculty working with practitioners in joint research efforts.
- 2 Practitioners participating in team teaching efforts with faculty as visiting professors or as practitioners in residence, or perhaps in full-time teaching capacities with recognized equivalent academic rank.
- 3 Professors serving faculty residencies or consulting with accounting and business firms.
- 4 Professors working with practitioners in staff training and continuing education programs.
- 5 Practitioners serving on advisory councils to professional programs.

84. This was a major factor in the AICPA's recommendation in 1969 for graduate study in accounting. *See* note 78 and accompanying text *supra*.

85. SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 52. During 1973, one firm spent \$10 million for the education of its professional staff, not including faculty salaries. *Id.* It should not be assumed, however, that firm-administered training programs are prompted solely by perceived deficiencies in the education of accounting graduates. Larger firms may also want to teach new recruits inhouse accounting procedures and to train them in more complex areas of practice that the firms would not expect to be covered adequately by the college or university.

broader professional education received, for example, in business and law are the desired objectives of a larger curriculum.

The professional school of accountancy also offers a method by which high standards can be developed and enforced. New schools are careful to emphasize their strict requirements for admission in order to compare favorably with the prestige enjoyed by other professional schools. The five-year professional program at Brigham Young University aimed at effecting a "metamorphosis from student to professional" warns:

Entry into the Institute of Professional Accountancy is not automatic with a declaration of a major in accounting. To qualify, you must maintain high academic standards while you are completing the University general education requirements, and you must apply for admittance before the end of your sophomore year. If you are admitted into the IPA, you will be a member of a select group starting on an exciting program, a program as professional as medicine or law, a program that offers you unique training.⁸⁶

Advocates of the professional school concept hope that the result of having more demanding standards will be a higher quality faculty and student body leading to a more professional research and graduate product.

Whether the advantages noted above can be realized by already existing and future professional schools will remain a question for some time. Opponents declare that, even if significant benefits can be derived from professional schools, a number of serious obstacles must first be overcome. Existing problems in finding an adequate number of able faculty members will need to be solved. Faculty in other disciplines who currently teach accounting students in related or interdisciplinary subjects would likely be reluctant to associate themselves exclusively with a separate school of accountancy.⁸⁷ Accounting firms, pressed to find acceptable talent to bear an ever-increasing workload, might not be willing to wait for students to complete graduate work.⁸⁸

86. Brigham Young University Graduate School of Management, *supra* note 54. The Board on Standards for Programs and Schools of Professional Accounting declares that such a program "must have high academic standards" and should attempt "to graduate an entry-level professional accountant." AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *supra* note 80, at 3, 13.

87. SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 15-16.

88. *Id.* at 63-64 (comments of Professor Robert R. Sterling of Rice University):
The need for professional staff has been so great that many firms have not been willing to wait for postbaccalaureate education. Many firms have recruited non-majors and others have recruited majors that had intended to go on to postbac-

Attempts to recruit students to the new schools might present a problem for two reasons. First, accountancy remains more anonymous than the professions of law and medicine, and many students develop an interest in the field for the first time by taking required accounting courses in the business curriculum. If accounting separated itself significantly from the business curriculum by the institution of its own school, students might not be naturally attracted to the field. Second, as long as the option remains to secure good employment with only a bachelor's degree, students may be unwilling to forego another year's earnings for what to them are still dubious benefits of a longer professional school program.

Perhaps the most significant difficulty that must be surmounted, however, is the increased cost per student that would result if a professional program is instituted instead of just changing the name from a department to a school of accountancy.⁸⁹ It is more expensive to sustain an independent faculty than it is to draw on faculty members already attached to the business school, and the lengthened program of study that is implied in a separate school of accountancy would also incur additional costs. Further, a separate school of accounting would be significantly more "visible" in terms of expenditures and a budget than would be an accounting department buried within a business school.

At least in some instances, however, the lure of the professional school has been irresistible and the obstacles have been overcome. Although only six professional schools of accountancy have to date been established,⁹⁰ many other universities are taking steps toward implementation of a professional program and still others are seriously studying the possibility. For the foresee-

calaureate education. For example, the University of Kansas established a five-year program a long time prior to the Beamer report. The faculty and students knew that we had a five-year program, but the recruiters didn't. Although the University of Kansas eliminated the undergraduate accounting major and moved most accounting courses to the fifth year, the recruiters couldn't wait; they recruited the nonmajors at the end of four years. As a consequence, the five-year program never got off the ground. The net result of the faculty's efforts was an elimination of the accounting major at the University of Kansas, not an establishment of a five-year major.

89. *Id.* at 64.

90. Professional schools of accountancy have been established at Brigham Young University, Louisiana Tech University, C.W. Post College of Long Island University, the University of Denver, the University of Florida, and the University of Missouri-Columbia. The school opened at the University of Florida in June 1977 is the first completely separate professional school of accountancy. See Skousen, *Accountancy Education: A Younger Sister Comes of Age*, 1977 B.Y.U.L. Rev. 1051.

able future, the movement toward the professional school will likely continue. With the movement will also come a host of implications in the areas of student competency evaluation, accounting curriculum, certification requirements, and accreditation standards.

Largely as a result of the trend toward professional programs in accountancy, the AICPA is investigating the need for development of an entrance exam for prospective accounting students similar to the business, medical, and law entrance exams. During April 1977 the AICPA sent out a pilot questionnaire to selected accounting educators to sample the response of the accounting academic community. Should the results of that survey finally be judged by the AICPA to be positive, a more general questionnaire of a similar format will be administered. Conceivably, if responses to the proposed test are favorable, a proposed entrance exam could be developed in 1978. Although actual use of such an exam may be limited at present because of the low number of professional schools, demand could rapidly increase as the number of schools rises.

It has already been noted that the most direct and immediate effect on the curriculum of a professional school of accountancy would often be a lengthening of the course of study to include work at the graduate level. The Board on Standards of the AICPA recommends "a minimum of five years of university education [including] at least two years of preprofessional education,"⁹¹ thereby allowing the student to graduate with both a bachelor's and a master's degree. A more subtle change, but one that is perhaps more important in understanding the accounting educator's conception of the role of educational programs, will likely emerge in the curriculum. As in legal education, which despite electives gives graduates a foundation in the law without regard to the type of practice they will enter, the curriculum in a professional school of accounting may also adopt this "threshold theory" of educating accountants, not attempting to prepare graduates for a specific field of accounting.⁹²

91. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *supra* note 80, at 2-3. Such a recommendation only prescribes the total length of study, leaving broad latitude regarding exactly what subject matter should be covered, whether the three years of professional study should take place in a separate professional school, and so on.

92. See SCHOOLS OF ACCOUNTANCY, *supra* note 7, at 47. Not all professional schools of accountancy, of course, have or will follow such a threshold approach. The Institute of Professional Accounting at Brigham Young University offers some degree of specialization during the fourth and fifth years in taxation, financial auditing, management accounting,

In most states at present, an individual who majors in accounting must have one to two years of practical experience functioning under a certified public accountant, either before or after taking the C.P.A. exam, before the C.P.A. certificate allowing the individual to practice independently can be awarded. The generally longer programs in the professional schools, it can be argued, obviate much of the need for practical experience. The AICPA Board on Standards recommends that upon graduation from a five-year professional program a student "should be permitted to sit for the Uniform CPA Examination and, upon passing, be awarded the CPA certificate."⁹³ The objective of this recommendation is a further movement away from the apprenticeship method of qualifying for practice toward the more strictly academic methods in medicine and law.

The existence of an accreditation process is ordinarily a hallmark of a professional education program. The AICPA and the AAA want to ensure that accounting is no exception. Presently, accounting departments are accredited only indirectly and by a different agency—the AACSB accredits the school of business within which the department of accounting is found. The AICPA and the AAA have established a joint committee on accreditation, however, to work with the AACSB toward the objective of separately accrediting accounting programs. Essential differences exist in the approaches suggested by the AICPA and AAA. The former proposes to accredit only five-year professional programs in accounting that combine undergraduate and graduate work; the latter would, in addition to the five-year schools, accredit regular four-year bachelor's degree programs as well as master's and doctoral programs that are not continuations of the undergraduate curriculum. Once the AICPA and AAA resolve their differences and the number of professional schools increases, it is likely that accounting programs will be accredited independently of business schools.

Spinoffs indicative of a growing professional awareness on the part of accountants have resulted from the increased interest in professional schools and accreditation of programs. New certificate programs have been established or are being contemplated to provide for accountancy designations separate from the C.P.A. In 1972, the National Association of Accountants instituted the

or management advisory services. BRIGHAM YOUNG UNIVERSITY GRADUATE SCHOOL OF MANAGEMENT, *supra* note 45, at 40-41.

93. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *supra* note 80, at 2.

Certificate in Management Accounting (C.M.A.) program, and the Institute of Internal Auditors began preparation for a Certified Internal Auditor (C.I.A.) program. Unlike the C.P.A., who is trained primarily to offer services in accounting and auditing to the public, the C.M.A. and C.I.A. "are designed to measure accounting and related knowledge and training that is useful to business, governmental and educational employers."⁹⁴ Those seeking the C.M.A. or C.I.A. designation are required to have a bachelor's degree or show equivalent academic ability, pass a certifying examination, obtain two years of practical experience, and participate in a minimum number of continuing education courses, much like the standards for a C.P.A. For both programs, "[t]he major objective . . . is to enhance the professional status of the management accountant."⁹⁵

A movement that is not new to accounting, but one that has been given increased impetus by the desire to maintain a professional level of competence and to stay on a par with the other professions, is the trend toward required participation in continuing education programs. Sixteen states have adopted some form of regulatory continuing education standards,⁹⁶ often at the instigation of the state's professional accounting association.⁹⁷ The AICPA is also active in this field, currently encouraging cooperation of private firms to voluntarily register their "practice quality review programs." Although not presently a serious possibility, talk of a comprehensive reexamination program to test continuing competency is not unusual.⁹⁸ Such a program would likely evolve if accountants were at some point officially allowed to specialize and certify separately in their specialty. Those who support professional schools of accountancy envision such schools as an integral part of any program to ensure continuing competence of the profession.⁹⁹

D. Education in Medicine

No one would question that physicians are members of a profession. Medicine progressed long ago through all of the recog-

94. Bulloch, *Professional Recognition—The Certificate Programs*, J. CONTEMP. BUS., Autumn 1975, at 108.

95. *Id.* at 105.

96. Peters, *Continuing Education May Require Annual Licensing of All CPAs*, CPA, Dec. 1975, at 7.

97. Wisconsin is one example. Gibson, *President's Page*, Wis. CPA, Dec. 1975, at 3.

98. *See, e.g., id.* at 4.

99. *E.g., SCHOOLS OF ACCOUNTANCY*, *supra* note 7, at 14.

nized steps to acceptance as a profession, and did so with remarkable ability and direction. Those who emerge from the academic process with an M.D. degree are almost universally recognized as belonging to a special class in society, one thought to have significant influence, wealth, education, and, frequently, a desire to serve society with their skills. Many in today's world regard medicine as the most "learned" among the traditional professions and undoubtedly the most useful.

In most respects, medicine has developed its professional credentials to the furthest and most structured degree of all the professions. Many see in the physician the epitome of dedicated, selfless service to society. The profession has lofty ethical standards and formal procedures for dealing with offenders. The state strictly regulates admission to the practice of medicine, and permission to sit for the state boards is possible only after the acquisition of an immense body of specialized knowledge gained in medical school. Anyone who has been to see a physician for a malady worse than the common cold knows well the arcane language used by medical practitioners that largely remains a mystery to patients. The crowning achievement of physicians in establishing their singular status in society, however, is the unequivocal acceptance by the general public of medicine as a *profession*. The myth prevails more tenaciously for physicians with an M.D. degree than for accountants with a C.P.A. or lawyers with a J.D. designation that the letters behind the name assert an unqualified expertise in the entire professional field.

The history of medical education has embraced most if not all of the evolutionary steps that business, accounting, and in some respects legal education are currently experiencing. The manner in which medicine has emerged from these stages provides both an informative preface for a study of the current direction of medical education and an interesting comparison with other professions.

1. *The history of medical education*

Formal medical practice in England was well established and regulated when immigrants to this country first began to carve out settlements in the wilderness. Medical needs of these early American settlers were always acute, but the necessity of fighting for their existence prevented any thought of systematically importing the same system of medical practice to these shores.

Whatever trained physicians¹⁰⁰ there were came from Europe, and "[i]n early colonial times few degreed practitioners chose to abandon the ease of an established practice in some British or continental city where graduate physicians tended to establish themselves, and to emigrate to a pioneer society. Barber-surgeons, apothecaries, and lay practitioners were more venturesome."¹⁰¹

Necessity forced the development of an apprenticeship system, and young men attached themselves to those with various degrees of medical training to learn by practice. Characteristically,

[t]he likely youth of that period, destined to a medical career, was at an early age indentured to some reputable practitioner, to whom his service was successively menial, pharmaceutical, and professional: he ran his master's errands, washed the bottles, mixed the drugs, spread the plasters, and finally, as the stipulated term drew towards its close, actually took part in the daily practice of his preceptor,—bleeding his patients, pulling their teeth, and obeying a hurried summons in the night.¹⁰²

As could be expected by a system that used sometimes questionably trained preceptors to instruct apprentices in what limited medical knowledge was available at the time, the results in terms of acceptable medical practice were often unfortunate.¹⁰³

Two modest events that occurred during the middle of the 18th century heralded the beginning of a new era in medical education. The first was the chartering of the Pennsylvania Hospital in Philadelphia in 1751, marking the beginning of "the hospital movement" in the colonies.¹⁰⁴ The second was the creation in 1765 of a professorship in the theory and practice of medicine

100. The term "trained physician" by today's standards is, of course, a misnomer. A physician at that time was considered trained if he had apprenticed for a time and was familiar with the limited amount of medical knowledge then available.

101. Norwood, *Medical Education in the United States Before 1900*, in *THE HISTORY OF MEDICAL EDUCATION* 463, 465 (C. O'Malley ed. 1970).

102. A. FLEXNER, *supra* note 7, at 3.

103. Norwood, *supra* note 101, at 469 (quoting 1 W. DOUGLASS, *A SUMMARY, HISTORICAL AND POLITICAL OF THE . . . PRESENT STATE OF THE BRITISH SETTLEMENT IN NORTH AMERICA* 383 (1755)):

[I]f we deduct persons who die of old age, of mala stamina vitae or original bad constitutions, of intemperance, and accidents, there are more die of the practitioner than of natural course of the distemper under proper regimen. The practitioners generally without any considerable thought fall into some routine method, and medicines, such as repeated blood-lettings, opiates, emetics, cathartics, mercurials, Peruvian bark.

104. *Id.* at 471. The hospital's charter was written by Benjamin Franklin.

at the College of Philadelphia, now the University of Pennsylvania.¹⁰⁵ The significance of each event, however, is found in their union at the hands of Thomas Bond, who had been instrumental in the establishment of Pennsylvania Hospital. Bond declared that training within the hospital was still a necessary adjunct to the lecture hall and that the student must therefore "Join Examples with Study, before he can be sufficiently qualified to prescribe for the sick, for Language and Books alone can never give him Adequate Ideas of Diseases and the best methods of Treating them."¹⁰⁶

The incorporation of Bond's recommendation enabled a student who possessed an adequate knowledge of fundamental academic subjects and who had completed the lecture curriculum at the college to supplement his required apprenticeship period with clinical experience in the hospital and to graduate with a bachelor's degree.¹⁰⁷ Within a few years, similar programs were instituted at King's College in New York, at Harvard, and at Dartmouth.¹⁰⁸

Education in the classroom and training in the hospital administered in association with a university were never meant to supplant the apprenticeship system.¹⁰⁹ It was left to the less scholarly and pecuniarily motivated proprietary medical schools to eventually ease the apprenticeship system out of its primary position for the training of physicians.

The proprietary medical school, which first appeared early in the 19th century, began as a rather inconspicuous phenomenon in medical education only to proliferate exponentially. The number of such schools grew by 26 between 1810 and 1840 and by nearly 50 between 1840 and 1880, until by 1910 over 450 schools had been established, the great majority of which did not survive.¹¹⁰ The education offered at such proprietary schools was characteristically woeful:

Wherever and whenever the roster of untitled practitioners rose above half a dozen, a medical school was likely at any moment to be precipitated. Nothing was really essential but professors. The laboratory movement is comparatively recent; and Thomas Bond's wise words about clinical teaching were long since out of

105. A. FLEXNER, *supra* note 7, at 4.

106. *Id.* (quoting T. BOND, *THE UTILITY OF CLINICAL LECTURES* (1766)).

107. *Id.* at 4-5.

108. *Id.* at 5.

109. *Id.* at 4.

110. *Id.* at 6.

print. . . . A school that began in October would graduate a class the next spring; it mattered not that the course of study was two or three years; immigration recruited a senior class at the start.¹¹¹

Proprietary school students received all of their education by lecture and had little or no clinical training. Instructors often bought "chairs" of medicine and divided the proceeds from student fees. Restrictions on practice were few or nonexistent, and students entered practice directly upon "graduation" from such programs largely inexperienced and unprepared to meet their patients' demands.¹¹²

Amid the vociferous criticism of the proprietary medical school, a few observers have pointed out that such schools were a natural outgrowth of the American culture and tradition of medical practice.¹¹³ Waving the banner of egalitarianism for the common man, the forces of Jacksonian democracy attacked and eliminated the few existing requirements for entry into medical practice, thus opening the door by way of the proprietary medical school for many prospective physicians who might not otherwise have been able to enter a university medical school or pass rigorous practice standards.¹¹⁴ One commentator has suggested that this historical development in medical education might even have been beneficial:

[I]t may be that [proprietary medical schools] suited the needs of the time better than the university medical schools did. . . . [T]hey complemented the apprenticeship system of medical education. Moreover, they trained large numbers of physicians for the frontier, with the result that almost no small town during the 19th century was without its general practitioner. It must be remembered that there was very little in the way of a scientific base for medicine during this period and certainly little that medicine could do for a patient therapeutically, so that the physician's lack of a university education probably made little difference.¹¹⁵

Lest one go too far in justifying proprietary schools, however, it should also be remembered that most laymen of today have a

111. *Id.* at 6-7.

112. *Id.* at 7-9. "[E]arly patients of the rapidly made doctors must have played an unduly large part in their practical training." *Id.* at 9.

113. *E.g.*, Ebert, *supra* note 7, at 139.

114. Norwood, *supra* note 101, at 476. Jacksonian democracy had similar effects on legal education and bar admission requirements. Section III, notes 26-35 and accompanying text *supra*.

115. Ebert, *supra* note 7, at 139-40.

greater knowledge of medicine than did the graduates of those schools.

The complacent dominance of the proprietary school was shattered in 1910 with the issuance of the Flexner report commissioned by the Carnegie Foundation. Abraham Flexner, who was an educator and not a physician,¹¹⁶ submitted an appraisal of medical schools that left almost no institution or facet of medical education unscathed.

Flexner severely criticized lax admission standards and the quality of the medical faculty. The student learning experience was a passive one and the curriculum was too theoretical; clinical medical education had completely lost its place in the training of physicians. Facilities were shockingly inadequate and most institutions had shaky financial foundations. Flexner advocated a universal shift toward the model of the great German medical universities of that time with which he was intimately familiar. Flexner argued that students with sounder credentials should be sought to meet higher admission and performance standards and should be provided with advanced training opportunities as interns and residents. Qualified faculty members should be carefully selected who would integrate the theory of the lecture room and the treatment of patients in the hospital, thereby giving students an academic foundation from which to approach the healing-art function of the physician. Both the classroom professor and the clinical instructor should be on the same footing and of equal importance in the physician's training. The medical school should thus be integrally associated with both the parent university and the teaching hospital.

The report came at a particularly fortuitous time. Agreement with its findings was nurtured and grew in soil already conditioned by several important developments. Medicine in Europe was experiencing a scientific revolution, as important frontiers of medical research were crossed and new disciplines within medicine opened: "Histology, pathology, bacteriology and physiology became fundamental disciplines that every educated physician needed to understand in order to be more than a poorly trained technician."¹¹⁷

116. The Carnegie Foundation later selected A.Z. Reed, a nonlawyer, to undertake a comprehensive study of American legal education systems. Section III, notes 15, 62-63 and accompanying text *supra*.

117. Ebert, *supra* note 7, at 140. See also Field, *Medical Education in the United States: Late Nineteenth and Twentieth Centuries*, in *THE HISTORY OF MEDICAL EDUCATION* 501, 501-03 (C. O'Malley ed. 1970).

Much closer and perhaps even more influential than the distant examples of European schools was the Johns Hopkins Medical School, patterned after the German university model and the only American school to escape Flexner's attack. Johns Hopkins had already incorporated many of Flexner's recommendations and became the example for the leading American medical schools for some time.¹¹⁸

Still another force that prepared the public and the profession for the Flexner report was the creation in 1904 of the Council on Medical Education of the American Medical Association (AMA). The original members of the council were judiciously selected; each was a prominent medical educator from a recognized university medical school committed to the betterment of medical education.¹¹⁹ One year after its formation, the council issued an "ideal standard" medical curriculum that set comparatively ambitious admissions and study standards for medical students, presaging some of Flexner's recommendations.¹²⁰

The medical education community responded, either voluntarily or under duress, with remarkable rapidity to the Flexner report. Within a few years

[n]ew state licensing laws were passed that defined in considerable detail the academic requirements for admission to medical school and the subject matter to be taught there. One by one the proprietary schools closed. Medical schools were reformed. Full-time professors were recruited to head clinical departments, and clinical medicine gradually became more scientific and less pragmatic.¹²¹

College degrees were required by nearly all medical schools as a condition for acceptance by 1930, and most had instituted a three- or four-year curriculum.¹²²

The decade of the 1930's was a watershed for medical education in other indirect ways. Scientific research prior to this time had produced important drugs for the treatment of common maladies,¹²³ but it was the introduction in 1936 of sulfonamide, the

118. Graduates and faculty members of Johns Hopkins, in addition to medical educators who emigrated from Europe, formed the nuclei of many established or newly developing medical schools, thus exporting the Hopkins system of medical education to many other institutions. Field, *supra* note 117, at 507.

119. *Id.* at 507-08.

120. *Id.* at 508.

121. Ebert, *supra* note 7, at 140.

122. Field, *supra* note 117, at 510.

123. Arsphenamine was introduced in 1910 and insulin in 1921. McDermott, *Demography, Culture, and Economics and the Evolutionary Stages of Medicine*, in

first of the antimicrobial drugs, and the subsequent significant drop in mortality rates resulting directly therefrom,¹²⁴ that excited the public and the profession with the possible tool medical research could put into the hands of practicing physicians. The National Institutes of Health, established in 1937, became the funnel through which the federal government began to pour an ever-increasing flow of funds into medical schools, or medical centers as they came to be called, for research. Faculty members became increasingly preoccupied with advanced research, inevitably pulling the orientation of medical school education, perhaps unwittingly at first, toward a more specialized and academic approach to medical problems.

As the explosion of knowledge caused by the emphasis on research continued, two important results accrued that have set the stage for current trends in medical education. First, the lines became more clearly drawn both between the academic medical center and the rest of the practicing profession and, within the medical center, between researchers, clinicians, and classroom instructors. Second, the medical curriculum, now unable to even approach covering the available medical literature comprehensively, moved to a system of core subjects supplemented by electives.

2. *Forces affecting medical education*

Perhaps more than any other profession, medicine has been affected in its historical growth and in its current direction by powerful, visible, and often conflicting forces both within and without its ranks. The arena in which these forces have most commonly attempted to exert their influence has been the medical school.

The public perceives the medical profession as providing a crucial service to society. Individuals once thought of receiving medical care as a privilege; now most Americans have extraordinarily high expectations of the medical community and regard an acceptable standard of care as their inherent right. The general public is often frustrated with the difficulty of entering a complex health care delivery system full of physician specialists, physician surrogates, and intimidating medical centers. Patients often wonder what has happened to the general practitioner and the family practice of yesteryear. Despite modest efforts in recent years to

curb the trend, the great majority of Americans have discovered that the "G.P." is a vanishing breed. Casting themselves increasingly as "consumers" of medical care and not as passive patients subject to their all-powerful physicians, the public is being moved by consumer advocates. Professional independence is less and less a viable excuse for an inadequate supply of primary care physicians, and many medical care consumers are demanding changes in medical education to produce a more commonly useful physician product.

Students raised in an era of affluence have often had more time and opportunity to contemplate issues of professional and social responsibility. Many of today's medical school students have deep sympathies with the poor and, increasingly, even with the middle class who cannot afford adequate medical care. Such students militate for a more active role by the medical center in the affairs of the surrounding community from which it has usually grown aloof. Other students enter medical school with the primary objective of remunerative rewards and do not wish to tamper with a system that has succeeded in producing one of the wealthiest professional groups in society. Generally, however, all students unite in desiring both a shorter, less costly medical school curriculum that will get them into practice earlier and a more realistic clinical experience than is usually afforded by the specialized problems drawn to a university medical center.

Faculty involved in research are understandably proud of their superb record in advancing the frontiers of scientific knowledge in medicine; they have a vested interest in retaining the academic, research-oriented direction of most prestigious medical centers. Some faculty members, however, particularly those who maintain a part-time practice, join students in wanting to eliminate so much exposure during clinical training to specialized cases and increase experience dealing with more mundane, day-to-day problems students will encounter once they graduate and enter practice.

Undoubtedly the most powerful force affecting medical education at present are those public and private organizations, most notably the federal government, that contribute an enormous share toward the overall costs of medical education.¹²⁵ Money is a most effective leverage tool, and the federal government is not

125. During the decade from 1963 to 1973, federal expenditures to medical schools rose well over 400% from \$247,000,000 to \$1,400,000,000. Rogers, *Medical Academe and the Problems of Primary Care*, J. MED. EDUC., Dec. 1975, at 173.

hesitant to use it. Governmental pressure is mounting on medical schools to increase enrollments, concentrate more on primary care instruction and orientation, and encourage placement of their graduates in areas not presently served by an adequate physician supply. Behind all the prodding is the often latent, but sometimes pointedly obvious, threat that funding might be curtailed. Medical schools realize that they have become so dependent upon federal aid that a weaning away from the proffered funding is impossible; compliance with federal guidelines is usually swiftly forthcoming.¹²⁶

3. *Trends in medical education*

Trends in medical education, perhaps more so than trends in the educational process of any other profession, are difficult to analyze and predict. Medical schools evidence the almost schizophrenic character of a professional education process split between theoretical and practical instruction. As a former Dean of the Harvard Medical School has stated: "Medical education has one foot in the university and one foot in medical practice, and so it has never become a completely integral part of academic life."¹²⁷ Add to this dichotomy the pull of a variety of powerful and competing interest groups, and it is not surprising that trends in medical education are often confusing and paradoxical.

The elasticity of the medical curriculum over the past decade demonstrates the effect of so many "pulls" on the education of physicians. The traditional medical curriculum is built upon the foundation of a solid undergraduate education, often in one of the sciences, and is formed of two years of theoretical instruction in the classroom, followed by an integration of clinical experience in the hospital during the final two years. Although clinical education in such a curriculum is a fundamental part of the student's overall preparation, a strict regimen of theoretical instruction *always* precedes practical experience in the traditional academic curriculum. Significant changes are emerging in this model.

Case Western Reserve School of Medicine is the prototype for many medical schools that are breaking down strict departmental

126. An exception to this proposition is found in the recent controversy over medical school acceptance of American students transferring from foreign medical schools. Some 15 U.S. schools decided to forego federal capitation grants rather than give up the right of applying their own admissions criteria. The schools' actions prompted one Congressman to question the usefulness of the grants. See Walsh, *Briefing: Congress Eases Capitation Punishment*, 199 *SCIENCE* 158 (1978).

127. Ebert, *supra* note 7, at 141.

lines between theoretical and practical instruction and are introducing students to the care of patients much earlier in the curriculum.¹²⁸ At one time shunned as inferior to an M.D. on a medical school faculty, scientists with Ph.D.'s are increasingly combining efforts with clinicians in the joint instruction of subjects such as pathophysiology.¹²⁹

Faced both with increasing public and governmental pressure to expand the supply of physicians and with student pressure to limit the costs and length of medical education, medical schools are attempting to produce more physicians in a shorter period of time. Not only have schools significantly enlarged their facilities to train larger classes of physicians, but new curricular designs have been proposed to shorten or at least make more compact the medical training period. Suggestions and actual changes have ranged from the cosmetic approach of compacting the traditional four-year curriculum into three years by eliminating summer vacations to the more fundamental restructuring necessitated by eliminating the coverage of certain required subjects or by integrating the two-year theoretical phase of medical school with the undergraduate curriculum.¹³⁰

Public and governmental concern over the types of physicians produced today is also producing important changes in the medical school curriculum and specialty training. The use of teaching hospitals associated with medical schools for the clinical training of physicians has resulted in a skewed view of patient care for most medical graduates. Most of such hospitals have a concentration of medical academicians and are centers of research to which rare cases are referred for special treatment. Medical students on rounds with clinicians receive exposure to unusual cases and pathology to the general exclusion of those kinds of cases most physicians actually see in practice.¹³¹ The result is often a form of "culture-shock" when physicians descend from the esoteric atmosphere of the medical center into the mundane wastelands of everyday practice. As a consequence, although such a program is difficult to administer, some medical schools are making an effort to use out-patients instead of exclusively in-hospital subjects during the clinical phase of instruction

128. *Id.* at 146.

129. *Id.*; R. ROY & J. MACNEILL, *supra* note 2, at 40.

130. Rogers, *The Unity of Health: Reasonable Quest or Impossible Dream?*, 48 J. MED. EDUC. 1047, 1054 (1971).

131. See Rogers, *supra* note 130 at 171; White, *Patterns of Medical Practice*, in PREVENTIVE MEDICINE (1967).

to give the prospective physician a greater exposure to primary care needs and a more realistic view of his future practice.

The unusual pathological orientation and specialist atmosphere of the medical center has also profoundly influenced the postgraduate training of physicians by encouraging the majority of medical school graduates to opt for residency programs in specialty areas. Although indications strongly suggest that there is currently a shortage of physicians who provide primary care services,¹³² the kind of care most demanded by those who seek physician assistance, an examination of the profile of first-year residents demonstrates that the percentage of primary care physicians will likely decrease over the coming years as medical school graduates choose other specialties.¹³³

The solution suggested by many academicians to this situation is predictable. First, the medical school-medical center complex should assume more responsibility for the postgraduate training of M.D.'s instead of simply deferring this responsibility to the residency programs of nonteaching hospitals. Second, once the academic centers have more control over the definition and direction of postdoctoral training, residencies should be recast with a heavier primary care orientation.¹³⁴ Along this line, the Administrator of the Health Resources Administration of the Public Health Service proposed in 1974 that a new specialty be created combining "the current general and family practice, internal medicine, pediatric and obstetrical-gynecology specialties" in an effort to entice more students into the practice of primary care medicine.¹³⁵

Although movements in this latter direction have occurred, most notably the recognition by the AMA in 1969 of a new specialty in family practice, it is not likely that the trend toward increasing specialization will be any less inexorable. In a profession such as medicine, in which the common body of constantly expanding knowledge is spread liberally among a number of fields, specialization appears to be immovably entrenched. The American Board of Medical Specialties currently has twenty-two member specialty boards¹³⁶ with the possibility that additional

132. See Endicott, *The Distribution of Physicians Geographically and by Specialty*, in *MANPOWER FOR HEALTH CARE* 59 (1974) (papers presented at the spring 1974 meeting of the Institute of Medicine, National Academy of Sciences); Rogers, *supra* note 130.

133. Endicott, *supra* note 132, at 61.

134. Rogers, *supra* note 130, at 178-79.

135. Endicott, *supra* note 132, at 67.

136. Member specialty boards include the American Boards of Allergy and Immunology, Anesthesiology, Colon and Rectal Surgery, Dermatology, Family Practice, Internal

specialties will develop and be represented in the future.

A stepchild of the push for more and better-distributed primary care physicians in light of increasing specialization has been the proliferation of new physician support personnel. Most notable among this expanding group is a physician surrogate known by various names: physician's assistant, physician's associate, Medex, nurse practitioner, or new health practitioner. The first official program, begun at Duke University in 1965, conceived this new health practitioner (NHP) to be an associate of the physician, trained for two years in a medical school environment consisting of both theoretical and clinical phases. The NHP would be competent to perform many functions of the physician not within the training of an office nurse, thus freeing the physician to treat more complicated cases commensurate with his additional training.

Seizing upon this idea of a "mini-doctor" capable of dispensing primary care to many patients with a minimum of supervision by a physician, the Department of Health, Education, and Welfare has promoted and funded the creation and operation of NHP training programs at a number of medical schools. Presently, two-thirds of the nation's medical schools are involved in the training of NHP's.¹³⁷

The growth of NHP's has highlighted another issue in the training of physicians. As more attention is paid to the rationalization and reorganization of the health care delivery system, physicians are increasingly working as part of a team of medical personnel in providing health care for their patients. Physicians are, however, educated in an atmosphere of blissful isolation, completely separated from nurses, NHP's, and social workers with whom they expected to work in close harmony in practice. Attempts have been made to integrate portions of the training of these health care providers to accustom each, particularly the physician, to the role he or she should play on the medical ser-

Medicine, Neurological Surgery, Nuclear Medicine, Obstetrics and Gynecology, Ophthalmology, Orthopaedic Surgery, Otolaryngology, Pathology, Pediatrics, Physical Medicine and Rehabilitation, Plastic Surgery, Preventive Medicine, Psychiatry and Neurology, Radiology, Surgery, Thoracic Surgery, and Urology. AMERICAN BOARD OF MEDICAL SPECIALTIES, ANNUAL REPORT 2-3 (1976-1977).

137. Rogers, *supra* note 130, at 174. A number of practical and legal questions remain unanswered in the use of this new personnel, including questions of licensure and independence from the physician. See A. SADLER, B. SADLER, & A. BLISS, PHYSICIANS ASSISTANTS: YESTERDAY, TODAY, AND TOMORROW (1972); M. Jensen, New Health Practitioners: Policy Issues (Apr. 17, 1975) (unpublished thesis in Princeton University Library). New health practitioners, however, appear to be a permanent and growing feature of our health care system.

vices team. The success of these attempts, however, has been minimal due to the differing levels of scientific and clinical expertise required by the different personnel.

Attempts to integrate part of the medical school curriculum with undergraduate study, the creation of NHP programs, and certainly the trend toward specialization are all evidences of the rapid expansion of medical knowledge. Concern justifiably exists whether physicians can and do keep up adequately with advances in their fields. The result of this concern has created one of the most dynamic movements in medical education: the trend toward continuing education and recertification.

Currently, twenty-two states have enacted laws authorizing state medical examining boards to require some form of continuing education as a prerequisite to recertification of a physician's license to practice.¹³⁸ Each of the twenty-two members of the American Board of Medical Specialties endorses in principle the concept of recertification, and fifteen member boards have already established or set target dates for their recertification procedure, usually consisting of a qualifying examination.¹³⁹ Although many of the boards endorse recertification only on a voluntary basis, it is likely that many will follow the example of the American Board of Family Practice, which declared from its inception in 1969 that recertification would be mandatory.

As with continuing education and recertification requirements, medicine is the most developed of all the professions in its organization of intraprofessional groups relating to medical education. Representatives of the AMA, the American Board of Medical Specialties, the American Hospital Association, the Association of American Medical Colleges, and the Council of Medical Specialty Societies have combined to form the Coordinating Council on Medical Education, a powerful organization that correlates educational efforts for its member associations.¹⁴⁰

Changes in medical education relating to the speedier production of physicians more inclined to provide primary care services have been slow in coming from those within the medical education community. Only when extraneous forces have been applied have medical educators been persuaded to move in this

138. Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Rhode Island, Utah, Washington, and Wisconsin. American Medical Association, Continuing Medical Education Fact Sheet (J. Ayers ed. Sept. 1, 1977).

139. AMERICAN BOARD OF MEDICAL SPECIALTIES, *supra* note 136, at 13, 18.

140. *Id.* at 22.

direction. A glance at the leadership of those organizations providing representatives to the coordinating council should answer any question of why such is the case. Most of the leadership is composed of professional administrators with an academic bent who are themselves products of the academic self-selection process. For such educators, it is natural and even necessary to push medical education along the traditional academic track of longer schooling, specialization to cover more material, and recertification to ensure continuing competence. Whether or not these are laudable goals that should be pursued despite the cost, the fact remains that those controlling medical education are often out of step with some of the needs of society and with a number of medical practitioners. As a former Dean of the Johns Hopkins Medical School has noted, "[d]uring the last 30 years the directions taken by those who teach in schools of medicine and those who practice medicine on the front lines have progressively diverged—to the disadvantage of both groups. . . . [I]t is time to correct the split."¹⁴¹

E. Conclusion

Despite substantial differences in the purpose and functions of businessmen, accountants, and physicians, the educational processes for each display remarkable similarities. Although training for each of the professions began with some form of the apprenticeship method, each has struggled and is still struggling through the traditional steps that lead to academic standing and increased prestige. This process has produced similar experiences for the professions in shaping priorities, structures, and methods of professional education.

Characteristic of each of the professional education programs in business, accountancy, and medicine is the conflict between practice and theory. Throughout the historical development of each educational program, practical experience in the office and practitioner courses in the classroom have been stigmatized as less than scholarly and therefore unworthy of professional education. Yet, it is difficult if not impossible to disregard completely the importance of practical experience to the prospective professional in whatever field. Business leaders and academicians alike acknowledge the value of work experience before entering business school as a device to lend perspective to the academic study of business. Experience in the working world after graduation is

141. Rogers, *supra* note 130, at 1050.

the polishing process that shapes theoretical principles into practical tools for decisionmaking. Although suggestions have been made to substitute a master's degree for the required period of apprenticeship, accounting school graduates must still practice under the supervision of a licensed C.P.A. for a stipulated time before receiving their own certification to practice independently. Medical students are most familiar with the benefits of practical experience since clinical training is inherent in the medical school curriculum. The residency period, which in reality is simply an extension of the medical education process, has a decided practical orientation. The medical profession, the most established and most exposed to public and governmental pressure, is apparently experimenting more with innovations that do not fit the traditional academic-theoretical mode than are business and especially accountancy, professions less visible to the public and still striving to establish their professional identities.

Increasing pressure from forces outside the education community often induce consideration of a more practical approach in professional education. Still, the drive in professional education programs is undeniably toward higher academic standards. Accountancy educators are pressing for autonomous professional schools. Powerful professional organizations that have been given the prerogative to accredit educational programs continually urge stricter academic standards. Professions such as business and accountancy that have not already established graduate study as a prerequisite to practice are moving in that direction, and professions such as medicine are forced to encourage ever-longer periods of graduate study in order to cover rapidly expanding bodies of knowledge in their fields. The traditional professional curriculum expects the student to master greater amounts of material in more subject areas while generally encouraging a particular competency in one special field. Academic, emotional, and financial pressures on prospective professionals mount as they compete against ever-increasing odds to enter professional school and attempt to do well academically in a highly competitive and an ever-lengthening program of study.

Results of this academic process are predictable and appear in the educational programs of the different professions. Support personnel develop as spinoffs of professional education programs. Specialization is encouraged by necessity, as it becomes impossible for professionals to be competent in areas other than a subsection of their field. The move toward continuing education begins slowly and almost reluctantly only to snowball quickly into voluntary and then mandatory requirements which must be met in

order to maintain professional competence and to ensure public confidence and support.

The eventual outcome of the movement of different professional education programs along the traditional academic track is at question. Perhaps there is a limit to the height of the academic ladder, and a profession that reaches the top step must eventually start down the other side. Perhaps educational programs will continue to increase academic standards, the theoretical content of the curriculum, and the length of graduate study. In this regard legal education faces the same questions as does education in business, accountancy, and medicine. The question of greatest interest, however, remains: On which side of the academic ladder is legal education moving?

SECTION VI
CURRENT TRENDS IN THE TRAINING OF LAWYERS: WILL LANGDELL
TAKE A BRIDE?

A. *The Public Pulse and Professional Response*

Why is there always a secret singing
When the lawyer cashes in?
Why does a hearse horse snicker
Hauling a lawyer away?¹

If Studs Terkel were to be commissioned by the American Bar Association (ABA) to interview the "man on the street" concerning public perceptions of lawyers, the result would likely be unflattering.² Indeed, Carl Sandberg's portrayal, although obviously exaggerated with poetic license, may not be far from the mark of popular sentiment. Yet, due to the nature of a lawyer's task, this "love-hate" relationship between lawyers and the public may never disintegrate to any great degree. Lawyers' work, and the adversary system which sustains it, can only mean that there are going to be winners and losers when conflict occurs. The lawyer will often not receive praise for a successful effort because

1. C. SANDBERG, *The Lawyers Know Too Much*, in COMPLETE POEMS 189 (1950).

2. Two national polls have confirmed the lack of public confidence in the legal profession. In response to the question of how much respect the interviewed person felt for lawyers, a 1973 Harris survey showed the following results nationwide:

Great Deal	35%
Only Some	46%
Hardly Any	14%
Not Sure	5%

LOUIS HARRIS & ASSOCIATES, INC., THE HARRIS SURVEY YEARBOOK OF PUBLIC OPINION: 1973, at 372 (1976).

A 1976 Gallup poll surveyed the public's perception of the honesty and ethical standards of lawyers with the following nationwide result:

Very High	5%
High	21%
Average	44%
Low	18%
Very Low	8%
No Opinion	4%

GALLUP OPINION INDEX, Jan. 1978, at 17 (rep. no. 150).

Lawyers are also critically mentioned in the public media. Take, for example, the following recent comment appearing in a *Chicago Sun-Times* column: "Not too long ago I printed a survey showing that in terms of trust, the American people ranked lawyers right up there with tarantulas. I immediately got angry letters complaining that the survey had insulted the tarantulas." Simon, *Lawyers Put on Trial by Lawyers*, *Chicago Sun-Times*, Apr. 24, 1977, at 7.

the client feels that his position *should* triumph, but the lawyer will likely be criticized if the client does not prevail.

It is not just the lawyer-client relationship that creates concern. President Carter, for example, recently suggested that the number of lawyers in government service ought to be reduced because attorneys "generate too much paperwork."³ And even among lawyers there are prestige and ethical rankings, with those involved in "unsavory" litigation such as criminal defense, personal injury, or divorce work being viewed by the profession as less ethical while higher status and ethical rankings are given those individuals who represent big business or who practice admiralty and patent law.⁴ Unfortunately, such a self-rating by the legal profession tends to confirm a public image of a collection of Uriah Heeps concerned with money to the virtual exclusion of all else:

While we doubt that altruism is directly or consciously derogated, even in the practice of law, it seems clear that the profit motive and the values associated with it are given precedence in the allocation of prestige within the profession. Service to the sorts of clients that the lawyer profits by serving is more likely to enhance the prestige of a specialty—the American legal profession seems, in fact, to be preoccupied with economic enterprise. . . . Thus, the legal profession is more concerned with the facilitation of business, with "getting things done," than with alleviating human suffering or with helping people. There is an important difference of degree, at least, between the legal and the medical professions in this respect. This is not to say that the legal profession does not perform useful social functions—it obviously does. The values it serves may be caricatured in catch phrases, such as, "The business of America is business," "What's good for General Motors is good for the country," or "Chicago—the city that works!" but the values served by the legal profession are the core economic values of our society. The more a legal specialty serves these values, the higher its prestige within the profession.⁵

Whether the legal profession differs in its concerns for financial remuneration or its level of altruism from other professions, or whether such criticism is even valid, are questions best left for another day. These general observations regarding public percep-

3. Press briefing, Feb. 24, 1977, as confirmed by White House Press Office, May 4, 1977, by telephone.

4. Laumann & Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 AM. B. FOUNDATION RESEARCH J. 155, 166-67.

5. *Id.* at 204-05 (footnote omitted).

tions serve only to reinforce the pressing need by the profession to build bridges with the consumers of legal services as well as internally within the profession. This crisis in public confidence has been, perhaps, the single most important catalyst during the past decade prompting the legal profession to undergo serious self-analysis, with the result that much of substance has recently been undertaken within the profession to redress past failings. The most active and successful of these efforts have centered on the training of lawyers because of the notion that many of the profession's problems flow from academically ill-equipped and even incompetent attorneys and that these problems cannot be solved unless minimum levels of professional competency are maintained. The result, reminiscent of current educational trends in business, accountancy, and medicine,⁶ has been a flurry of activity in which new programs and variations on old themes are being tried in law schools and by the bar. The purpose of this Section is to briefly explore some of the most interesting and innovative of these programs and proposals for the training of lawyers, again with the caveat that this study cannot report on every development but must be selective with the hope that broader current trends will be readily discernible.⁷

B. *Alternative Models in Legal Education*

Professor Walter Gellhorn has described the traditional law school model for the training of lawyers as follows:

First year. 1. Orientation in certain fundamental fields of the law—fundamental in the sense that they require no antecedent legal training and fundamental in the sense that they serve as building blocks for use in later courses (e.g., Torts, Contracts, Property, Procedure). 2. Acquisition of case-law skills.

Second year. 1. Orientation in some more "fields of law," not necessarily more difficult than those already studied, but presumably drawing upon first year background. 2. Further polishing of case-law skills.

Third year. 1. Information about still some more "fields of law"—with very few exceptions the same that were open to study in the second year. 2. Further polishing of case-law skills.⁸

6. See Section V *supra*.

7. The issues of greatest currency concerning the training of lawyers have already been identified in Section II *supra*. Those issues will also provide the framework for this Section.

8. Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1, 5-6 (1964).

In the main, this pedagogical approach is used in most American law schools today. This does not mean that the legal education community has ever been fully convinced that the three-year case-method model, since its emergence in the late 19th century, is a panacea. Early on, such pioneers as A.Z. Reed,⁹ Harold D. Lasswell, and Myres S. McDougal¹⁰ have sought to tinker with this model, but it has shown surprisingly strong staying power. Recently, as has already been noted, pressures from within and without the legal profession are forcing reevaluation of many traditions, including the three-year case-method approach to legal education. The proposals for restructuring this basic educational model fall into two categories: (1) structural reform through collapsing or increasing the number of years a student spends in formal and informal law training and (2) major reorienting of the curriculum to be more "relevant" to the needs of the profession and more intellectually stimulating to the student.¹¹

1. *Structural reform*

Standard 305(a) of the ABA's standards for the accrediting of law schools specifies that the school shall require, with certain exceptions, "as a condition for graduation, the completion of a course of study in residence, of not less than 1200 class hours, extending over a period of not less than ninety weeks for full-time students, or not less than one-hundred and twenty weeks for part-time students."¹² Standard 305(a) must be read in conjunction with Standard 502(a):

9. Reed proposed that, in addition to the growth of the university-related three-year law school, schools with part-time programs should be allowed to grow and flourish as a service both to those who would otherwise be unable to attend on a full-time basis and to the community as a whole. See A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 415-16 (Carnegie Foundation for the Advancement of Teaching Bull. No. 15, 1921).

10. Professors Lasswell and McDougal proposed that law school curricula ought to be reorganized to train lawyers to be policymakers rather than legal "mechanics." Their proposal would have required a greater infusion of skills training in thought, observation, and management into the classroom. See Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

11. Obviously, it is too simplistic to say that attempts at reform fall neatly into one of the two categories. There are a variety of themes which emerge, but for purposes of discussion the two categories will serve as a convenient vehicle.

Only "major" curriculum reform will be discussed in this subsection; a discussion of "minor" curriculum reform or program innovations will follow later in the Section. Again, it is difficult to draw the line other than on an almost arbitrary basis. In general, "major" curricular reform refers to a total restructuring of the curriculum whereas program innovations are generally supplemental endeavors to the basic traditional curriculum.

12. AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS: STANDARDS AND RULES OF PROCEDURE 8 (1973).

The educational requirement for admission as a degree candidate is either a bachelor's degree from a qualified institution, or successful completion of three-fourths of the work acceptable for a bachelor's degree at a qualified institution. In the latter case, not more than ten percent of the credits necessary for admission may be in courses without substantial intellectual content, and the pre-legal average on all subjects undertaken and, in addition, on all courses with substantial intellectual content, whether passed or failed, must at least equal that required for graduation from the institution attended.¹³

By reading these two standards together, it becomes clear that there is little flexibility open to those law schools desiring to create new patterns of study unless they do so within the three-year full-time format. Attempts to substantially modify these standards have met with general disapproval, particularly from within the academic community.¹⁴ Accordingly, any substantive proposals for major reform of the three-year pattern of legal education for the moment remain just that—proposals. Some of the most thoughtful and interesting proposals are categorized below.

a. *The two-year law school.* As has been observed, "there is nothing magic about the figure '3' in considering the appropriate number of years for law school training. Nor should a taboo exist to prevent consideration of alternative methods of teaching law, awarding degrees or admitting lawyers to practice."¹⁵ With that statement as a working premise, former ABA President James Fellers has proposed that the third year of law school be eliminated and that students be awarded the LL.B. degree after successful completion of three years of undergraduate work and two years of law school. With its collapse of the present seven-year program into five years, the Fellers' position represents one of the most simple and straightforward restructurings of legal education. The proposal, it should be noted, is similar to the approach now being taken by newly developing schools of accountancy.¹⁶ Fellers' five-year program would be expected to endow a

13. *Id.* at 14.

14. Stoltz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37, 37 (1973). Professor Stoltz describes opposition from a number of law school deans to a proposal that would have modified the present three-year standards to allow a two-year law school program. Stoltz contends that the proposal was challenged as being "premature," as putting undue pressure on those schools wishing to continue a three-year program, and as forgetting that "three years [are] essential to give lawyers breadth." *Id.* at 41-46.

15. Fellers, *There Is No Magic in the Figure 3*, LEARNING AND THE LAW, Summer 1976, at 76.

16. Section V, notes 79-92 and accompanying text *supra*.

graduate with the basic skills in legal subjects, with further training, when necessary, being provided through a variety of programs including an additional third year devoted exclusively to clinical work. The obvious rationale for this basic two-year law school program is a belief that students can be educated as well in two years as they presently are in three.

Without a doubt, the Fellers' proposal represents the thinking of many practitioners who regard the present three years of law school as a compounding of the abstruse.¹⁷ But the two-year law school has also received support from the academic community in the form of a report from a blue-ribbon committee of the Association of American Law Schools (AALS) chaired by Professor Paul Carrington.¹⁸ The Carrington report represents one of the most thoroughgoing proposals to address the issues of structural and curricular change in legal education. The committee deliberations resulted in the formulation of the following major conclusions and goals:

1. Law schools should offer education that corresponds to the varied needs of the public for legal services and to the varied goals of a wider array of students.
2. Each member school should re-examine each component of its program, and the curriculum in its entirety, to determine whether the costs in human and financial resources are justified by the benefits attained in advancing educational goals.
3. Each member school should evaluate its program to determine how well it furthers the selected goals, which may encompass:
 - (a) preparing individuals to advise clients, public or private, in general law practice;
 - (b) preparing individuals who seek special competence in particular fields of practice;
 - (c) preparing lawyers with capacity for interdisciplinary research;
 - (d) equipping individuals for careers in the delivery of legal services as members of allied professions;

17. During the fieldwork period of this study, the authors have heard innumerable complaints by practitioners and judges at conferences and symposia to the effect that law schools, with their "esoteric" courses, particularly in the third year, are not responding to the needs of the profession. For a somewhat different view, see D. JACKSON & E. GEE, *BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975). In *Bread and Butter?*, we concluded that, based upon student choices of law school courses, there continues to be a high proportion of students who take almost exclusively "bread and butter" offerings.

18. CURRICULUM STUDY PROJECT COMMITTEE, ASSOCIATION OF AMERICAN LAW SCHOOLS, *TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971* (P. Carrington ed. 1971) (AALS 1971 Annual Meeting Proceedings, Part One, Section II) (Carrington report).

- (e) providing a grounding in law for students motivated by intellectual curiosity, whether they are unsure of their career goals, or plan to follow careers in other disciplines.
4. Schools should free themselves of received dogmas, such as the conception that all graduates must be trained to omnicompetence, or that the first degree in law can be awarded only after three years of law study within the walls of a law school. Law school programs should reflect functional needs and break free of offerings and approaches that have nothing but longevity to commend them.
5. In order to encourage re-examination and to foster diversity among member schools, the Executive Committee should re-evaluate the association's accreditation standards to determine how well they advance public interests.¹⁹

To accomplish these goals, the committee proposed that the educational format be restructured to allow completion of the basic law degree (J.D.) in two years. A student would be admitted into law school after completing three years of higher education or its equivalent, making the total program, undergraduate work and law school, a five-year package.

In order to accomplish this structural change, the Carrington report proposes major changes in the law school curriculum in order to serve a variety of functions and audiences. At the report's core is the "standard curriculum" which, when completed in two years, would lead to the J.D. degree. The purpose of this curriculum is "to assist students in the attainment of competence as professional generalists."²⁰ The standard curriculum would involve one year of required instruction in courses on legal and social control, legal advocacy, legal doctrine and method, legal decisionmaking, and legal planning.²¹ The second year would be

19. *Id.* at 1-2.

20. *Id.* at 7.

21. The Carrington report recommended that the traditional first-year law school courses be eliminated based upon the following rationale:

Perhaps more important is the Model's proposed redefinition of the courses of Basic Instruction to reflect the goals stated in the description of the model professional. The traditional titles of first year courses are seen to be obstacles to an understanding of the educational process. The doctrinal organization reinforces the usual expectation of students that their job is to master doctrine. The non-doctrinal organization permits the teacher to place the objectives of professionalization and interdisciplinary insight in a position of prominence. The Model would liberate the teacher from the domination of the doctrinal textwriter and assure the students that work devoted to the development of professional skills and broader insights is not tangential to their law study. The Model

devoted to "intensive" and "extensive" instruction. Intensive instruction would allow a student to become fully immersed in selected subject matter under close supervision of a faculty member. These courses are divided into three groups: advocacy, planning, and research. The student is encouraged to take a course in each category. Whereas intensive instruction would involve individual professorial attention and skills development, extensive instruction is calculated to give a student broad exposure to a variety of legal subjects and doctrines and is therefore based upon the more traditional teaching model that includes formal lectures and examinations. Although this standard curriculum might be completed in two academic years, a student could extend the program for a longer period if necessary. The essence of the proposal is to "not . . . standardize or limit the length of professional training for generalist lawyers. It [the standard curriculum] proposes to eliminate the timeserving requirement, but with the expectation that most professional students would ultimately receive somewhat more than two years of instruction, while many might well receive more than three."²²

With the standard curriculum as its nucleus, the Carrington report encompasses two additional elements: an "advanced curriculum" and an "open curriculum." The advanced curriculum would be available to those who have completed the J.D. degree and wish to gain further skills or to receive instruction in specialized areas such as business regulation, taxation, or oil and gas law. If a student attains a special instruction certificate, completes a program of research instruction, performs graduate work in a law-related discipline, and is eligible to receive a graduate degree in that discipline, then the student would be awarded the Ph.D. in law.²³ The open curriculum would be a course of study available at the law school to any university student who wishes to gain a general knowledge about the law or who desires to focus on legal issues as they arise in other disciplines. The open curriculum would serve an interdisciplinary and service function for the

recognizes the importance of initiating novice students to more practical and broader views of law before they become too entrenched in a narrow view of the appropriate limits of law study. This achievement is attained at the cost of eliminating the familiar first year course titles from the curriculum. This radicalism may seem threatening to many, but most law teachers would, on close examination, find their current efforts moderately close to those described in one of the courses set forth in the program of Basic Instruction.

Id. at 36-37.

22. *Id.* at 45.

23. *Id.* at 23.

university as a whole and for students who are curious about the law but who do not wish to undertake the rigors of law school.²⁴

One of the most important contributions of the Carrington report is its thoughtful articulation of why a two-year law school is desirable:

The case for this change could rest simply on the values . . . which favor the development of student freedom and responsibility. . . .

That moral judgment can be reinforced by reference to the apparent adverse consequences of time-serving requirements. Most of these consequences derive more or less directly from the fact that longer training programs are less attractive to prospective entrants than shorter ones, other factors being equal. Thus, as the Model shortens the investment of time and forgone income required of its students, it becomes more attractive. While it is fair to say that few law schools now need a stimulus to their admissions programs, there are advantages to enlarging the range of their appeal.²⁵

Specifically, the report argues that a two-year program would increase the availability of legal services by making law school more attractive to more people. The increased interest in legal education would help improve the quality of legal services by expanding the qualified law school applicant pool. That expansion would eventually be translated into better and brighter lawyers. The report further expands the quality argument by contending that a shorter period of formal study time would mean that students could more easily pay for quality instruction because they would not have to assume a three-year financial burden. Not only would this make legal education more attractive, but some of the money expended by the student for the traditional third year could be more effectively used on specialized training. Finally, the committee report asserts that

the Model's reduction in time-serving [will] provide leadership among the professions: all the professions need to be led away from what has become an "academic credentials race" that is increasingly costly to the public. . . . Somehow, the impulse to collect academic funeral beads for whole professional groups must be contained; a trend which sends prospective plumbers into the intricacies of hydraulic engineering in order to qualify to perform a change of washers has to be corrected. Who is to

24. *Id.* at 12-13.

25. *Id.* at 45-46.

lead the way back to a more rational allocation of resources, if not the lawyers?²⁶

It should be noted that, no matter how persuasive the Carrington committee's rationale and thoughtful the proposals, its recommendations have been received with little more than an academic yawn.²⁷ This could be an indication of just how strongly entrenched the three-year academic model has become. Alternatively it could simply be that the committee made a good proposal at a time when institutions of higher education wanted to heal old wounds after the wars of the sixties rather than open any additional controversial fronts. But, for whatever the reason, recommendations of the Carrington report lie dormant.

b. *The two-year "plus" law school.* Several other proposals, built around a two-year formal training core, have been expounded. These proposals, however, do not entirely eliminate the third year. One of the most creative of these plans has been made by Bayless Manning, former dean of the Stanford Law School. Manning argued for a two-tiered system of training:

The overall job of training lawyers should be recognized as having not one part but two parts—one performed by the law schools and one by the bar. Educational missions should then be allocated between the two in accordance with their inherent comparative advantages. To the law schools, which do not, after all, hold themselves out as "lawyer schools," should go those functions of teaching law that are essentially analytic, intellectual, and suited to classroom learning techniques. To the bar's training schools should go the functions of training lawyers in the operating skills of lawyering, those skills that are best acquired in an on-job working context and in which experience, rather than analysis, is the key to achievement. These new training institutions of the bar would be operated mainly by and through practicing lawyers. To these institutions would be assigned the teaching responsibility for most specialty training, including litigation; most kinds of continuing legal education, particularly those aimed at increasing the lawyers' practical skills; and numerous other matters such as the training of recent law school graduates in local state practice and procedure. None of these lawyer training functions is being adequately performed today either by the law schools or by the bar.²⁸

26. *Id.* at 47.

27. This does not mean that the Carrington report has not generated comment. See, e.g., Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 228-29 (1974). Boyer and Cramton, however, refer to the fact that very little enthusiasm has been shown to adopt the Carrington proposals.

28. Manning, *Law Schools and Lawyer Schools—Two-Tier Legal Education*, 26 J.

The law student, after undergoing two years of formal law school training, would receive an intermediate J.M. degree. Upon completion of the "lawyer" school, the young attorney would be awarded the J.D. degree and would then be eligible for a bar examination. This proposal, it should be noted, has an interesting similarity to the shared responsibilities of the universities and the bar in the English system of legal education.²⁹

Manning offered the two-tiered system as an answer to the often expressed student dissatisfaction with spending a third year in the confines of the law school.³⁰ The third year would now consist of a mixture of training experiences all calculated to develop essential "lawyering" skills. The adoption of the Manning plan ostensibly would have other benefits: the quality of the bar would be improved; the law schools, given a continuation of their present structures, could improve their student-faculty ratios and increase the numbers of entering students; and the proposal would allow those who wish substantive legal training, but not skills training, to complete their studies in two years.³¹

Another proposal, similar to Dean Manning's, has been offered by the immediate past president of the ABA, Justin Stanley.³² The Stanley proposal also contemplates that the law student would complete formal substantive training in two years. The next year would then be devoted to taking a series of continuing legal education (CLE) courses, under the direction of the bar, "designed to impart lawyering skills and to satisfy any other requirements that the [state] supreme court wished to prescribe."³³ Upon completing the required CLE courses, the student

LEGAL EDUC. 379, 382 (1974).

29. See generally Section IV *supra*.

30. Manning, *supra* note 28, at 383.

31. *Id.* Manning realistically realizes that such a proposal has at least three drawbacks: (1) the inertia against such a radical change; (2) the strong belief held by many that two years of substantive law training is not enough; and (3) the expense to the bar to administer the so-called "lawyering" schools. *Id.* at 383-84.

Another similar proposal has been made by Edgar Cahn, co-Dean of the Antioch Law School. Cahn argues that two years of law school training could be combined with two additional years in a "teaching law firm." Cahn, *Tomorrow's Law Schools*, LEARNING AND THE LAW, Summer 1976, at 73.

32. Stanley's proposal has been widely circulated because he effectively used his ABA position as a forum to advocate a restructuring of legal education. See, e.g., Stanley, *Two Years +*, LEARNING AND THE LAW, Winter 1977, at 18.

In response to Stanley's proposal, the ABA Section on Legal Education and Admission to the Bar established a special subcommittee to study the feasibility of establishing such a program. The subcommittee is now seeking funding to establish a pilot program based on the Stanley model at a receptive law school.

33. Stanley, *Why Not Let the Bar Take Over the Third Year of Law School?*, B. LEADER, July 1976, at 22.

would be awarded the J.D. degree. The student might have already taken the bar examination after the second year of law school, but would only be allowed to handle limited matters under the supervision of a senior lawyer prior to completing the CLE courses and receiving the J.D. degree.³⁴

The thrust of the Stanley proposal is to reinvolve the practicing bar and the judiciary in the legal education process other than through the "back door" method of clinical legal education in which some members of bench and bar spend limited time supervising student interns. Stanley argues that his proposal would have a number of additional benefits. For example, the plan might provide state supreme courts with greater flexibility in shaping admission requirements. Moreover, the proposal would do away with the "boring" third year by assuring "the opportunity for earlier employment and a different route to entry to the bar."³⁵ Stanley also believes that his proposal would help solve the educational dilemma for law schools that would be created if a number of state supreme courts and federal courts adopt rules peculiar to a jurisdiction for admission to practice.³⁶

c. *The 2-1-1 law school.* A third major variation on the traditional three-year program has been suggested by Dean Michael Sovern of the Columbia University Law School.³⁷ This proposal, euphemistically called the "2-1-1" plan, would allow students "to spend a year in practice after their second year of law school, provided that they return to school for a final year of formal instruction after their year in the wilderness."³⁸ This third year spent in practice would not be required of all students, but only of those who desire an opportunity both to see what the practice has to offer and to participate under the supervision of senior attorneys in actual cases. The fourth year would then be spent by the student at the law school undergoing formal training in specialized areas of the law which now interest the fledgling lawyer after spending a year at the barricades.

The purpose of the Sovern plan is to combat the third-year "doldrums" by allowing students to spend time finding a professional direction so that upon returning to the law school the stu-

34. *Id.* at 20-22. *But see* Stanley, *supra* note 32, at 20-21.

35. Stanley, *supra* note 33, at 22.

36. Stanley also realizes that the proposal may create a variety of problems, and therefore suggests that it be adopted on a modest experimental basis at first until technical difficulties are solved. *Id.*

37. Sovern, *Training Tomorrow's Lawyers: A Response to the Chief Justice's Challenge*, 11 COLUM. J.L. & SOC. PROB. 72 (1974).

38. *Id.* at 76.

dent would not be "a time-server in his nineteenth year of educational servitude" but rather "a beginning professional anxious to master his craft."³⁹ Additional benefits could also result from the 2-1-1 structure: a student would be able to pursue an individual course of study in the fourth year tailored to the particular interests of the student; the third year spent in practice would allow students to enrich the classroom environment for others through insights they gained while practicing; the fourth year could act as a first step in any certification schemes that may be developed by the bench and bar; the third year in practice could also increase student tolerance for training in "broadening" courses such as jurisprudence and comparative law; and the practical exposure could give students a better perspective from which professional responsibility and ethics can be studied.⁴⁰

Always the careful pedagogue, Sovern suggests that his proposal be tried on a limited scale at first in order to prevent major educational displacement and to survey its effects on such valuable institutions as the intramural law journals and moot court programs that presently rely heavily on third-year students.⁴¹ Sovern also foresees other possible risks in his plan. For example, traditional career patterns might be skewed. In addition, because of their limited internship capacities, public interest firms and governmental employers might be disadvantaged vis-a-vis the private law firm.⁴² Finally, the fourth year would be expensive because to effectively meet the needs of the returning students a variety of specialized courses and individual tutorials would be necessary, all costing considerably more than the traditional high density law school class.⁴³

Despite the weaknesses of the 2-1-1 plan as candidly discussed by Sovern, the Dean makes a persuasive case for the plan's adoption. Still, if the present growing debate in legal education is to be believed, such a proposal stands little chance of wide acceptance because it runs counter to the current trend to streamline the educational process.

d. Specialization and tracking. The least dramatic, yet in many ways the most innovative and useful, proposals for struc-

39. *Id.* at 77.

40. *Id.* at 77-79.

41. *Id.* at 79: "The interruption of a year in practice obviously breaks the succession and requires adaptations if the system is to continue to function."

42. *Id.* at 79-80.

43. *Id.* at 82-83. Sovern argues that this expense can be somewhat offset by the fact that many students will have been able to save some money during their practice year, thus helping to lighten the debt burden. *Id.* at 80.

tural reform would allow students to concentrate their efforts on one or two major areas of the law within the three-year format or to follow different pedagogical tracks. One need only peruse a number of law school catalogs to detect that legal education still maintains a generalist flavor, although as curriculums have expanded it has become possible for students to take a number of advanced courses within a concentrated area.⁴⁴ Yet, with a modicum of variation, most law students will have followed the same course of study at the time they graduate from law school.⁴⁵ There is a growing sense that this generalist approach may not be adequately meeting student desires and societal needs in a time of increased specialization, due mainly to a knowledge and technological explosion.⁴⁶ Medical education has long recognized the need to specialize for these same reasons,⁴⁷ and the emergence of professional schools of accountancy is encouraging a greater degree of specialization in that profession.⁴⁸ Legal education, in contrast to education in the other professions, continues to drag its heels.

One of the most interesting proposals allowing for increased specialization in legal education was made by Professor Thomas F. Bergin of the University of Virginia Law School. Professor Bergin's proposal provides for a two-track system: "The two tracks are, of course, the LL.B. or J.D. track (to be followed by those who wish to practice at the Bar) and the Ph.D. track (to be followed by those who wish to become legal academics or legal policy advisers to government or high-echelon private decision makers)."⁴⁹ Bergin argues that this system would greatly reduce

44. See D. JACKSON & E. GEE, *supra* note 17, app. II. It is also interesting to note that some law schools have started to indicate in their class schedules and catalogs that certain course offerings are sequential and fall into particular specialty groupings. For example, the Columbia University Law School catalog groups course offerings under specialty headings such as commercial law; corporations; corporate securities and business regulations; criminal law; history and philosophy; human rights; international, transnational, and foreign law; labor law; taxation and estate planning; urban affairs and environmental law; and clinical law. COLUMBIA UNIVERSITY, COLUMBIA UNIVERSITY BULLETIN: SCHOOL OF LAW (Columbia University Bull. Vol. 10, No. 11, 1976).

45. E. GEE & D. JACKSON, FOLLOWING THE LEADER?: THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA 33-39 (1975).

46. Thorne, *Professional Education in Law*, in E. HUGHES, B. THORNE, A. DEBAGGIS, A. GURIN, & D. WILLIAMS, EDUCATION FOR THE PROFESSIONS OF MEDICINE, LAW, THEOLOGY, AND SOCIAL WELFARE 111-13 (1973) (report to the Carnegie Commission on Higher Education).

47. See Section V, notes 136, 138-39 and accompanying text *supra*.

48. See generally Section V, notes 84-85 and accompanying text *supra*.

49. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 653 (1968).

the schizophrenia among legal educators and students as they try to maintain a delicate balance between skills and theoretical training. Bergin would have the first year of law school required for all law students, with the first-year courses providing healthy doses of jurisprudence and legal philosophy. At the completion of that year, students would choose one of the two tracks. The J.D. or LL.B. track would be designed "to equip the future practitioner with the skills and understanding a lawyer needs to do his work well. . . . [T]he LL.B. candidate will have to develop such an array of analytical, psychological, and strategic talents that he will be truly a many-splendored thing when he emerges."⁵⁰ On the other hand, the Ph.D. track would allow a student to study in depth any substantive area of the law that interests him. The result of this effort would be a Ph.D. dissertation. "[T]he Ph.D. candidate would not be required to develop any practitioner's skills such as syntax manipulation or plea bargaining strategy."⁵¹ Implicit in this proposal is that there would be two faculties within the law school—one for each track. The Ph.D. and LL.B.-J.D. faculties would be free to concentrate their efforts on either academic or practical training, respectively, to the benefit of both; the division of energies so often prevalent in today's law schools would thus be avoided.⁵²

Another similar endorsement for structural modification of law schools is found in the Carnegie Commission on Higher Education legal education study conducted by Professors Herbert Packer and Thomas Ehrlich.⁵³ In addition to supporting the Carrington report concept of a two-year law school curriculum,⁵⁴ Packer and Ehrlich argue that diversity in legal education can best be served by allowing students a variety of educational options.⁵⁵ To that end they suggest that law schools offer the following degrees:

J.M. (or M.A.)—for one year of law study, normally combined with study of a different discipline.

50. *Id.* at 655-56.

51. *Id.* at 656.

52. Bergin believes that many of the problems in legal education stem from the diverse expectations facing faculty members. They are supposed to be academicians and scholars on the one hand, and practitioners or "hessian-trainers" on the other. As a result, Bergin concludes, law faculty do neither job very well. *Id.* at 639-43.

53. H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972).

54. *Id.* at 77-83.

55. *Id.* at 83. Among these options would be the opportunity for an individual to "step out" and then return to continue his education at a later time, a notion popularized by the Carnegie Commission on Higher Education. See *CARNEGIE COMMISSION ON HIGHER EDUCATION, LESS TIME, MORE OPTIONS: EDUCATION BEYOND HIGH SCHOOL* (1971).

J.D.—the normal generalist's first law degree.

J.S.D.—an advanced degree (after the J.D.), for a substantial scholarly contribution.⁵⁶

Indeed, the Stanford Law School (where both Packer and Ehrlich were faculty members) has adopted a J.M. program requiring a candidate to successfully complete the first year of law school plus an additional 28 units of law credit. The purpose of such a degree is to train individuals in the basics of the law while allowing them the flexibility to continue pursuit of other interests or other disciplines.⁵⁷ For example, an individual seeking a Ph.D. in political science may find the J.M. useful to his teaching and research interests. Thus, an available track for those interested in law only from an interdisciplinary perspective adds yet another dimension to the possible structural alternatives.

Packer and Ehrlich also suggest that, as a heretofore unitary bar crumbles, there will be a greater need for specialization within and among law schools:

For example, School A may become either its state's or its region's or the nation's center for training specialists in field X. School B need not supinely imitate School A. It may become a center for field Y, or it may decide that it will not offer any specialized training. School C may become a center for the advanced education of interdisciplinary scholars; it may become a kind of center for educating aspiring law teachers or scholars. Given sufficient differential resources, we would expect different schools to move along different tracks.⁵⁸

Such specialization could provide students, employers, and educators with a variety of options and opportunities from which interests, talents, skills, and needs could more readily be matched. Because they are more modest in approach, especially when compared with some of the other alternative models already explored, the concepts of specialization within the law curriculum and alternative career tracks can be easily adopted by law schools without major structural disruptions. This fact alone may make them the most attractive of alternatives as legal education seeks to respond to its critics.

56. H. PACKER & T. EHRLICH, *supra* note 53, at 84.

57. STANFORD UNIVERSITY, STANFORD UNIVERSITY BULLETIN: STANFORD LAW SCHOOL 22 (Stanford University Bull. Ser. 30, No. 8, 1976).

58. H. PACKER & T. EHRLICH, *supra* note 53, at 83.

2. *Curriculum reform*

Recent years have seen a flurry of activity within law schools to experiment and innovate. Much of this activity has been concentrated in the area of program and technical innovations rather than major curriculum reform. Indeed, the major curriculum innovation in most law schools appears to have been the proliferation of new courses. Unfortunately, this growth in new offerings has been mainly by accretion rather than through thoughtful faculty deliberations.⁵⁹ Yet, there have been a few identifiable programs which have been developed that may not necessarily represent new trends in curriculum structure but do provide significant alternatives to the present educational formats.

a. *Cooperative education: Northeastern University School of Law.* Northeastern University has long had a reputation of being in the forefront of educational innovation as evidenced by the fact that the university now operates one of the most successful university cooperative education programs in the country. The law school adopted the cooperative education format in 1968 and has had reasonable success with the program over the past decade.⁶⁰ Cooperative education at Northeastern is an attempt to provide law students with practical legal experience in a structured fashion while they are still in law school. This is accomplished by requiring each student during the last two years of law school to spend alternating three-month segments in some form of full-time legal clerkship.⁶¹

The mechanics of the program are simple. All entering students are required to take the classic first-year curriculum of civil procedure, torts, constitutional law, contracts, criminal law and

59. Boyer & Cramton, *supra* note 27, at 230. See also Cohen, *Toward Radical Reform of the Law School Curriculum*, 24 J. LEGAL EDUC. 210 (1972). Professor Cohen has provided a colorful analysis of law school curriculum ills:

What is the primary wrong resulting from the roots of case method and [curriculum] aridity? Without going into the esoteric formulary words with which we appease our critics, such as not enough drafting, not enough real problems, etc., etc., *ad infinitum*, *ad nauseum* [sic], the simple matter is that we bore the stuffing out of any student with a modicum of intelligence and any of the sense of critical inquiry with which we claim we are seeking to imbue our students.

Id. at 211.

60. The Northeastern University School of Law was originally established in 1898, but ceased functioning in 1955. The University revived the Law School in 1968, at which time the cooperative education format was implemented. See NORTHEASTERN UNIVERSITY SCHOOL OF LAW, 1976-78 CATALOG 9-10 (1976).

61. *Id.* at 10.

procedure, property, and legal writing-moot court.⁶² Interestingly, Northeastern students are also required to take federal income taxation during the first year. At the end of the first year a class of approximately 125 students is divided into two segments in order to alternate cooperative education and academic quarters.⁶³ Students are required to complete seven quarters of academic work and four quarters of cooperative education work before being eligible to receive the J.D.⁶⁴ This can generally be accomplished within three calendar years.

The claimed advantages afforded the law school and the student from the rotating academic and work program are several.⁶⁵ The school is able to make full use of faculty and facilities on a year-round basis. Students are in a position to structure their academic program around the work experiences that they will receive so that the academic and practical are more comfortably melded together. Students are exposed to a variety of job opportunities and therefore can make better informed decisions about career choices. Importantly, students will also have had the opportunity to prove themselves in an employment situation, thus opening up possibilities of permanent employment with a cooperative education employer. Finally, the written evaluations that students receive from cooperative education employers will be helpful to others as the student is seeking permanent employment.

The cooperative education format also presents a number of possibly substantial difficulties. The scheduling of courses so that every student will have at least one opportunity to take "bar-related" offerings means that the richness of the curriculum must be somewhat limited unless the school is willing and able to substantially increase numbers of full-time faculty.⁶⁶ Because students by necessity and inclination take cooperative education jobs throughout the country, faculty supervision and contact with the employer and the student will be very limited. This fact also makes it difficult to provide meaningful evaluation of the cooperative education experience and the student's performance. There is some difficulty in finding cooperative education opportunities

62. *Id.* at 26-27.

63. *Id.* at 10.

64. *Id.* at 24.

65. Interviews with administrators, faculty, and students at the Northeastern University School of Law on May 13-14, 1976, allowed the authors to draw the following conclusions concerning the strengths and weaknesses of the cooperative education program.

66. It can also mean that faculty may be required on occasion to carry heavier than normal teaching loads, thereby making other scholarly activity more difficult.

that provide students with a significant law-related work experience. The type of students who can participate in a cooperative education experience may be somewhat limited because of the fluid nature of the program which requires students to be able to leave and return to the Boston area at three-month intervals.⁶⁷

Despite these problems, Northeastern's program receives high marks from faculty and students, with many students suggesting that the traditional third-year apathy is not as prevalent at Northeastern as it is among their colleagues at other law schools. Most certainly, the cooperative education approach does not appear to be a cure-all for educational ills, but the program does provide an opportunity for some students to receive a significantly different experience from those involved in the traditional three-year programs. For cooperative education to spread much beyond enclaves such as Northeastern, a substantial commitment and reeducation of the bench, bar, government, and private employers would be required in order to assure widespread cooperative opportunities on an ongoing basis.

b. *SCALE: Southwestern University School of Law.* Southwestern University School of Law in Los Angeles, California, received a substantial grant in 1974 from the Fund for the Improvement of Postsecondary Education of the United States Department of Health, Education, and Welfare to develop an experimental conceptual approach to the teaching of law.⁶⁸ This program, known as Southwestern's Conceptual Approach to Legal Education (SCALE), graduated its first students in 1977. The broad purpose of the program has been to devise a curricular and instructional approach with appropriate supporting materials that will instill in a graduate a "broader understanding of the philosophy of the law, as well as a more in-depth perspective of the interrelationships of legal principles."⁶⁹

The SCALE program as presently structured involves the student in two years of intensive work with only a three-week

67. For example, students with families would find it difficult and expensive to move their families every three months. Yet, without an assurance that all cooperative education experiences will be in the Boston metropolitan area, a student must be prepared to go anywhere on a program. In addition, there is no guarantee that students will be paid for the experience, although the law school seeks to ensure fair compensation. The cooperative education element of the program must be viewed as educational and not as a substitute for financial aid. See *NORTHEASTERN UNIVERSITY SCHOOL OF LAW*, *supra* note 60, at 11.

68. Boyack & Flynn, *A Conceptual Approach to Legal Education*, 6 *Sw. U.L. Rev.* 592, 595 (1974).

69. *Id.* at 606.

summer vacation and normal time off for holidays.⁷⁰ Not only does the program allow students to complete their education sooner, but the plan also "more reasonably approaches the ordinary work of the lawyer with a continuous calendar of problems and a continuing pressure to solve the problem in the shortest possible time."⁷¹ The student spends eighty weeks in classroom instruction and fourteen weeks of externship, with about 1400 hours of classroom instruction.⁷² This total compares favorably with the amount of instruction received during a three-year traditional program and therefore meets the minimum ABA accreditation standards.⁷³

The unique feature of the SCALE program, though, is not its restructured academic calendar but the new pedagogical methodology that the Southwestern faculty has developed. The faculty started with the following assumption:

If the study of law is to be made more nearly like the practice of law, then law schools must proceed to deal with a problem which of necessity is more complex in its nature and more varied in its relationship to human experience than can be presented in any single course approach. It is assumed that the students will understand that lawyers work with concepts rather than with courses and that concepts are the basic material with which the lawyers work to resolve legal problems.⁷⁴

Proceeding on this assumption meant that a new set of course materials had to be developed which would eliminate "the compartmentalization of the law's 'seamless web' into the courses as in the traditional school and which [would utilize] a problem-solving technique."⁷⁵ With the use of such materials, instructors no longer deal with subject matter, but only with pervasive concepts such as fraud, intent, mistake, fiduciary duty, and estoppel as they are found in the instructional problems.⁷⁶ Such an approach is meant to more closely represent the actual practice of law and to greatly eliminate redundancies that often occur in traditional courses containing overlapping legal concepts.⁷⁷

70. Office of the Dean, SCALE (Southwestern's Conceptual Approach to Legal Education) (unpublished, undated release from the Office of the Dean, Southwestern University School of Law).

71. Boyack & Flynn, *supra* note 68, at 605.

72. See Office of the Dean, note 70 *supra*.

73. AMERICAN BAR ASSOCIATION, *supra* note 12, at 7-8.

74. Boyack & Flynn, *supra* note 68, at 597.

75. *Id.* at 598.

76. *Id.* at 595.

77. *Id.* at 599-600.

The first-year curriculum is divided into class segments called perspectives, concepts, and skills.⁷⁸ The perspectives segment focuses on the study of case law through the disciplines of philosophy, economics, history, and logic. The intent is to provide the student with an understanding of the law as well as its historical and philosophical underpinnings. The concepts segment "builds the foundation of substantive legal theory and rules, organized by ideas which cut across traditional course lines. Principles of civil and criminal liability are taught in concepts such as intent, consent, negligence, strict liability, cause, risk and mistake."⁷⁹ Finally, the first-year students are given opportunities to develop lawyering skills through a variety of simulated exercises and writing assignments.

The second-year curriculum is divided into two major segments, transactions and externships.⁸⁰ Transactions turns the classroom into a teaching law office with the instructors and students assuming the roles of senior partners and associates respectively. In this segment lawyering skills are further developed and a variety of hypothetical problems are analyzed based upon the theoretical framework developed in perspectives and concepts. Finally, all of the students are expected to participate in a number of externships with lawyers, judges, and government agencies throughout the two-year program.⁸¹

Because of SCALE's experimental nature, Southwestern has accepted only sixty students into each of the two entering classes. These students are drawn from a cross section of Southwestern applicants and are admitted into the program on a voluntary basis.⁸² At present, the tuition for the two-year program costs a student slightly more than he would pay if attending the regular three-year program.⁸³ The unique format of the SCALE program makes it difficult for a student to transfer to another school or into the regular Southwestern program without starting again at

78. Office of the Dean, note 70 *supra*.

79. *Id.*

80. *Id.*

81. Because the externships are an integral part of the SCALE experience, the law school actively seeks cooperation of the bench and bar in the Los Angeles area. The externships are undergoing continued evaluation to assure that each student will receive a quality experience.

82. Remarks of Dean C. Boyack, 97th Annual Meeting, Council of the Section on Legal Education and Admission to the Bar, ABA (Aug. 12, 1974).

83. The SCALE tuition cost for the two-year period commencing in summer 1977 is calculated at \$8,800, while the same tuition cost for a student commencing a regular program in fall 1977 is calculated at \$7,980 for a three-year period. Of course, this assumes no change in tuition costs. Office of the Dean, note 70 *supra*.

the first-year level. Also, SCALE students are not graded in a traditional fashion but are given written evaluations at regular intervals throughout the two years.⁸⁴ If a student's work is unsatisfactory, he may be dismissed from the program. The written evaluation along with a student's work file will be made available to employers upon the student's request. At the end of two years, a student graduates with a J.D. degree.

Southwestern University has obviously undertaken a major effort to restructure the process of training lawyers. Due to the limited experience, it is difficult to evaluate effectively the success of the SCALE program; however, the program is undergoing intensive scrutiny both by the Southwestern faculty and independent consultants. At the moment, there appears to be "cautious optimism" about the experiment and an intention to commit additional law school resources to the program.⁸⁵

c. *The clinical law school: Antioch School of Law.* The Antioch Law School in Washington, D.C., accepted its first class in the fall of 1972.⁸⁶ This law school represents one of the more novel and creative attempts at legal education presently being tried in this country. Unlike many American law schools offering limited clinical opportunities to their students as an adjunct to a basic traditional program, Antioch requires all of its students to take at least thirty credits of clinical work.⁸⁷ The curriculum is designed around clinical activities, and classroom work is intended to supplement the student's clinical experience. The program and purpose of the school have been described as follows:

[Antioch's] program has been fully approved by the American Bar Association and it meets the high standards prescribed for law schools seeking to produce graduates eligible to seek admission to the Bar of any of the 50 states. As a law school, its primary consumers are students who seek a legal education that will prepare them to be lawyers. The School exists to make this available. The School is also a law firm. It utilizes the ability of some 25 lawyers and 375 students to provide legal services to the poor and to others who cannot obtain adequate representation in our society. As a law firm, its primary consumers are clients. The legal profession values no duty more highly than the duty

84. *Id.*

85. Remarks of Dean C. Boyack, Brigham Young University Law Faculty Meeting (Feb. 23, 1977).

86. ANTIOCH SCHOOL OF LAW, Catalog 11 (1976).

87. *Id.* at 66. A student must also earn at least 62 credits in classroom offerings to qualify for graduation.

of the lawyer to provide zealous, competent and loyal service to his or her clients.⁸⁸

In order to successfully meet its obligations as a law school and as a public interest teaching law firm, Antioch has a continuous twelve-month academic calendar.⁸⁹ This calendar insures that cases which Antioch has agreed to take as part of its clinical program do not suffer during an academic break. At the same time, an extended calendar allows students sufficient opportunities to complete their heavy academic, clinical, and internship requirements without undue pressure or hardship.

The first-year program at Antioch requires all entering students to take a series of courses designed to provide these students as soon as possible with the minimal knowledge and skills necessary to service clients and to understand the role of advocacy in our legal system.⁹⁰ At the same time that they are completing the first-year courses, students are given clinical exposure by being assigned to one of the three main clinical divisions established at the law school: public law, private law, and criminal law.⁹¹ Students regularly rotate among sections within these clinical divisions during their three years at Antioch in order to gain a broad perspective on the nature of a lawyer's work.

In addition to clinical rotation, second- and third-year law students are also required to complete courses in real property; business associations; national goals, federal programs, and the legal system; and legal profession, career options, and delivery systems.⁹² All students must also successfully fulfill a ten-week internship with a government agency and write a senior thesis. Students may take elective courses, but the pressures of a total clinical commitment predictably keep the number of elective offerings to a bare minimum.⁹³ After successful completion of the academic and clinical requirements, generally at the end of the

88. *Id.* at i.

89. *Id.* at 11.

90. *Id.* at 46, 50-52. Although the catalog uses such course designations as private law-remedies and legal decision making, shunning the traditional course titles, it is apparent that basic legal concepts involving torts, contracts, administrative law, criminal law, and civil and criminal procedure are being taught.

91. *Id.* at 62-64.

92. *Id.* at 52-56.

93. *See id.* at 57-59. Basic courses in federal courts, federal taxation, securities regulations, antitrust, jurisprudence, labor law, commercial law, and wills and estates are offered. In addition, a small number of clinical seminars focusing on such problems as employment discrimination, juvenile rights, and community development are offered. *Id.* at 59-61.

spring semester of the third year, a student is awarded the J.D. degree.

The law faculty are expected to wear three hats as "attorney-professors": classroom instructors in academic courses, clinical supervisors in the clinical division, and attorneys of record for the clients with whom the clinic is involved.⁹⁴ Academic courses are taught in rather traditional ways, using the Socratic and case methods, problems, and lectures. The clinical component, on the other hand, finds the same instructor in the role of "senior partner" with students taking on a variety of assignments under supervision commensurate with their skills and training. The current clinical cases are used as "a vehicle for the analytic insight necessary to convert lessons learned from one clinical assignment into more general applicable knowledge, sensitivity and competence that are the hallmarks of the professional."⁹⁵ To meet that goal, clinical instructors hold "grand rounds" in which important cases in the clinical division are discussed with all of the students in the division and "office rounds" in which cases of particular interest in a section of the division are examined by students in that section.⁹⁶ Students move from basic clinical activities where they act as legal interns to more advanced assignments and clinical courses, eventually undertaking actual client representation in court.⁹⁷

As with the other alternative models herein reviewed, the Antioch program raises possible problems concerning student evaluation. Antioch has opted for a pass-fail grading system for "external purposes" and an A through F system for "internal purposes."⁹⁸ In addition, students are often provided with written evaluations of their clinical work that can be included in a student's file. At present Antioch is also attempting to develop competency evaluations in which students must meet certain quantifiable objectives before they are allowed to pass on to more advanced academic and clinical work.⁹⁹ If successful, these competency evaluations could help legal educators correlate educational functions with legal skills.¹⁰⁰

94. *Id.* at 43.

95. *Id.* at 45.

96. *Id.*

97. *Id.* at 44.

98. *Id.* at 67.

99. See ANTIOCH SCHOOL OF LAW, PROFESSIONAL BOARDS: A PROGRAM TO DEVELOP TESTING AND EVALUATION TECHNIQUES TO MEASURE ACHIEVEMENT IN CLINICAL LEGAL EDUCATION (1975).

100. Cahn, *supra* note 31, at 73.

This innovative level of activity has not been sustained without costs. Since 1972 the law school has hired forty-nine attorney-professors; during the same period, thirty-six faculty members have left the school, most of their own volition.¹⁰¹ Such an unstable employment pattern can be attributable to several problems.¹⁰² The majority of faculty members have been hired from the practicing bar, and the allure of private practice has caused some to return. The conflicts arising among academic expectations, class preparation, student supervision, and client representation has created great frustration.¹⁰³ The expectations of faculty members to basically control their academic destiny and the school's direction have often come into conflict with the charted course of co-Deans Edgar and Jean Camper Cahn.¹⁰⁴ Student unrest has also been apparent. The Antioch Law School set as a goal that the door to the law school would be opened to a greater cross section of individuals than are generally found in most American law schools.¹⁰⁵ To obtain that goal new and different applicant screening methods were developed.¹⁰⁶ The result has been a studentbody with approximately thirty percent minority composition, forty percent women, and a large proportion of students with nontraditional law student backgrounds and work experience.¹⁰⁷ This student mix has resulted in a very active and concerned

101. Williams, *Antioch Law School Struggles Through Turmoil*, Wash. Post, May 25, 1977, at C8, col. 3.

102. Possible causes of faculty turnover were identified in an interview with Attorney-Professor John Sizemore, in Washington, D.C. (Apr. 29, 1976).

103. Terrence Anderson, former Academic Dean of the Antioch Law School, has recognized this problem:

In any clinical setting, faculty and students face an inherent potential for conflicts between the interests of students as consumers of educational services and the interests of clients as consumers of legal services. The duty to be in court may conflict with the need to be in the classroom; the need to prepare for an exam may conflict with the deadline for filing a brief. In the Teaching Law Firm, the fact that all faculty members are teachers and lawyers and that all students are students and legal interns increases the likelihood of such conflicts.

ANTIOCH SCHOOL OF LAW, *supra* note 86, at i.

104. Interview with Deans Edgar and Jean Camper Cahn, in Washington, D.C. (Apr. 29, 1976).

105. Interview with Sally Begley, Director of Admissions at the Antioch School of Law, in Washington, D.C. (Apr. 30, 1976).

106. The application form for the Antioch Law School is a lengthy document which seeks in addition to background information to ascertain the commitment of the student to the study of law through questions such as: "Describe an instance of injustice you personally witnessed or participated in. What did you do? In retrospect what would you do now?" In addition, personal interviews are required.

107. Interview with Sally Begley, Director of Admissions at the Antioch School of Law, in Washington, D.C. (Apr. 30, 1976).

studentbody. The students have not failed to make the law school administration aware of their occasional dissatisfaction with faculty, class offerings, and academic directions.¹⁰⁸

Antioch is an experiment. The experiment certainly has been successful in attaining some of the school's stated goals. The question remains, of course, whether Antioch can survive intact as a clinical law school or whether the pressures from bar examinations, placement opportunities, accreditation standards, members of the bench and bar, and students and faculty will shift its focus to more traditional training routes.

C. Program Innovations in Legal Education

The insurgency of educational reform in law is no longer the ideological spasm of a spirited liberal or the idiosyncrasy of a few brilliant teachers with mental quirks. The new radicalism is beginning to enter the mainstream of legal education, goaded not a little by the complicated phenomena and momentous events with which law must deal. Law schools search for a newer and more satisfying identity through curricular movements that espouse clinical training, public and policy oriented law, "lawyering" emphasis, social science incorporation, and more.¹⁰⁹

Professor Redmount's description of the "new" legal education as "radical" reform is surely an overstatement.¹¹⁰ Much more common, and thus far more successful, than the attempts at a major restructuring of legal education as described in the preceding subsection have been those recent modest efforts at reform and innovation within the superstructure and traditional formats of the three-year law school program which Redmount identifies. In many ways these efforts appear to be cosmetics aimed at diverting criticism while successfully sweeping the larger problems aside. They do, however, represent movement and a willingness

108. Williams, *supra* note 101, at col. 4.

109. Redmount, *A Conceptual View of the Legal Education Process*, 24 J. LEGAL EDUC. 129, 129 (1972).

110. Even Professor Redmount recognizes his exuberance in a later article where he states:

The mainstream of legal education is substantially unaffected and unchanged since the ingenuity of Langdell transformed the educational enterprise in 1871. Even the current experiments in law learning . . . appear to have a temporal quality that belies, or at least as yet fails to establish, the substance and permanence of discrete novelty in legal education.

Redmount & Shaffer, *Learning the Law—Thoughts Toward a Human Perspective*, 51 NOTRE DAME LAW. 956, 963 (1976).

on the part of many legal educators to question sacred assumptions.

1. *New technology*

This is the age of technology. Other than a few courses on "law and the computer" and "law, science, and technology" that have been offered in law schools, legal education has managed to remain aloof from the effects of this technology explosion. Recent stirrings of interest from various outposts of the legal education community indicate that computer- and videotape-based educational experiences are now being developed with some success. If they do prove to be efficient and effective teaching tools, their impact on the process of training lawyers will undoubtedly be great.¹¹¹

a. *Programmed learning.* The concept of programmed learning as developed by B.F. Skinner was first given application in the legal education field by Professor Charles Kelso.¹¹² Subsequent to Kelso's initial work, developments in computer technology have now made it possible to use the computer, rather than a programmed text, as the teaching instrument. At present, attempts to develop computer programs for teaching legally related skills have been limited, with the majority of the work being done at the University of Minnesota¹¹³ and the University of

111. Isaac Asimov, the futurist, has given the following description of computers and their technological impact:

It is not that the computer can do what we cannot do; it's just that it does in 100 seconds what would take us 100 years. Thus, back in 1609, the German astronomer, Johann Kepler, worked out generalizations that described the orbits of the planets traveling about the sun. For the first time in history, the solar system was correctly described. But in order to work out those laws, Kepler had to begin with many hundreds of observations of the exact position of the planet Mars at different times. He then had to spend years of calculation in an attempt to find out how to relate all those observations.

A couple of years ago, a modern mathematician took all Kepler's raw data and fed it into a computer. It took him several days to gather the data and prepare a program for it, of course, but once the computer received data and program, it worked out Kepler's laws in exactly eight minutes! . . .

It is tragic that Kepler had to waste years on such stultifying labors. With a modern computer, he could have done the dull part in eight minutes and spent the saved years trying to work out additional creative thoughts. The computer frees mankind from slavery to dull mental hackwork, as power machinery frees him from slavery to the pick and shovel.

Asimov, *Who's Afraid of Computers*, Newsday, Jan. 20, 1968, at 8W.

112. C. KELSO, A PROGRAMMED INTRODUCTION TO THE STUDY OF LAW (1965) (Part I: Case Skills).

113. Professor Russell Burris, Director of the Consulting Group on Instructional Design at the University of Minnesota, and Professor Roger Park of the University of Minne-

Illinois.¹¹⁴

Programmed learning in its simplest form presents a series of posed questions in some format which, when answered correctly, allow the student to continually progress through groupings of new or repetitive questions. If the questions are not correctly answered, some penalty is imposed such as requiring the student to review more material or start again at the program's beginning.¹¹⁵ The purpose of programmed learning is to provide the student with immediate and positive reinforcement concerning the subject matter to be learned by placing him in an active learning role.¹¹⁶ Computer-based learning, though much more sophisticated in concept and format, involves the same basic theory.

The Minnesota and Illinois projects are so developed that the computer carries on a dialogue with the student. Often the student is placed in the role of judge or counsel and must respond to the various "real" problem situations that the computer provides.¹¹⁷ The student performance is continually monitored, and the computer program can prescribe review material or additional advanced problems and materials to the student based upon individual student performance. Equally important, the computer will review the program from a consumer standpoint, providing statistical data to the creator of the program so that it can be continually improved and modified.¹¹⁸ The software for these computer-aided exercises is being developed so that any teacher can write an exercise for the computer without major

sota Law School have been the prime resource people to develop law-related computer-based teaching programs on the University's computer. Professor Robert Keeton of Harvard has worked closely with the Minnesota group and is the prime mover in seeking to establish a computer network through EDUCOM which would allow many law schools to be linked together and use the various computer-based programs as they are developed. See Maggs, *Tube-Watching in Law Schools*, 12 TRIAL 32, 34 (Dec. 1976); *Law Schools Join the Computer Networks*, LEARNING AND THE LAW, Summer 1976, at 79-80.

114. The University of Illinois has developed a computer-based education system called PLATO. Professors Peter Maggs and Thomas Morgan of the University of Illinois Law School, along with other legal scholars such as Charles Kelso, have devised computer-based learning programs for students using the PLATO system which will be distributed commercially. See Maggs, *supra* note 113, at 34-35; Maggs & Morgan, *Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience*, 27 J. LEGAL EDUC. 138 (1975).

115. Maggs & Morgan, *supra* note 114, at 140.

116. For a detailed explanation of programmed learning theory, see *TEACHING MACHINES AND PROGRAMMED LEARNING* (A. Lumsdaine & R. Glaser eds. 1960).

117. A number of programs are in various stages of development, including ones in contracts, evidence, ethics, interviewing and counseling, legal writing, procedure, property, regulated industries, and tax. See Maggs, *supra* note 113, at 34-35.

118. Maggs & Morgan, *supra* note 114, at 139.

technical training.¹¹⁹ Such a capability will greatly increase the attractiveness and usefulness of computer-based learning because neither the unique characteristics of any classroom nor the peculiar interests of an instructor need be consumed by the need for uniformity in the computer program. This result is especially important if the computer-based learning experience, as claimed, is meant only as a supplement to classroom instruction.

The computer-based learning program can be of particular benefit in legal education if properly developed and used. First, the computer can place each law student in an active learning role. "A student who reads hornbooks need answer no questions. A student in a class of 100 need answer only a few questions a semester. A student working with the computer must be constantly alert and participate actively by answering questions."¹²⁰ Second, the program can actually provide the student with individualized instruction.¹²¹ Not only can the computer prescribe instant critiques and remedies for academic weaknesses, but the students and the professors can leave notes in the computer for each other, thus enabling an individual dialogue that due to time or logistics might not otherwise occur.¹²² Finally, the computer can make better use of that scarce resource: student and teacher time.¹²³ A student can use the computer at his leisure, resulting in what probably will be a better learning experience. The teacher can spend the appropriate amount of time to develop a thoughtful program to answer most student inquiries rather than doing so between the rush of other obligations. This recital is not meant as an endorsement of computer-based education, although the concept is most attractive. It is presently in such an embryonic state that it is difficult to evaluate its effectiveness.¹²⁴ All that can be said is that if existing technical problems can be resolved and the cost is not prohibitive, then an integration of the computer-

119. *Id.* at 139.

120. Maggs, *supra* note 113, at 33.

121. *Id.*

122. *Law Schools Join the Computer Networks*, LEARNING AND THE LAW, Summer 1976 at 81. For example, a student at Illinois might leave a note for Professor Kelso concerning a Kelso program, and Kelso can answer the question from his terminal in Indiana.

123. Keeton, "Tell Me" "Show Me" "Involve Me," LEARNING AND THE LAW, Winter 1976, at 20. Professor Keeton argues persuasively that the aphorism—"Tell me, and I will forget. Show me, and I will remember. Involve me, and I will understand."—is particularly applicable to computer-based learning because it provides for a high level of involvement. *Id.* at 18.

124. Maggs and Morgan have attempted to evaluate developed programs and conclude that they are useful "adjunct[s] to a student's understanding of particular complex areas of the law." Maggs & Morgan, *supra* note 114, at 155.

assisted learning approach into the law school classroom will provide an instructor with a useful teaching resource heretofore unavailable.

b. Computer-assisted research. A lawyer's craft involves an extensive use of, and reliance on, the law library. An otherwise impossible task of library research, especially in light of the exponential growth of case law and administrative rulings, has been made immeasurably easier due to West Publishing Company's key number system and the reporting services furnished by such publishers as the Bureau of National Affairs and the Commerce Clearing House. Even with the accessibility to legal materials that these research tools provide, it was to be expected that, as computer technology developed, attempts to turn computer capability to legal research would occur. Today, "[c]omputerized document retrieval systems are now a commercial reality; they enable attorneys and other researchers to search quickly through large collections of judicial decisions and statutes for those containing words pertinent to their inquiries."¹²⁵

Although there have been a number of attempts to develop computerized formats for legal research, the most successful are two competing systems known as LEXIS and WESTLAW.¹²⁶ LEXIS originated as a project of the Ohio Bar through a nonprofit corporation, Ohio Bar Automated Research (OBAR).¹²⁷ The work of OBAR was eventually taken over by a commercial company, Mead Data Central, which used the acquired concepts and new technology to create a more sophisticated system. The LEXIS system, as it is called, has three major features.¹²⁸ First, LEXIS is a full-text system. The text of all available data is found in the computer bank, and a search for legal materials may be conducted by using words, phrases, or numbers found in the text. Second, the LEXIS system is interactive. This means that the user and the computer communicate with each other through an ongoing dialogue by use of a terminal which can be easily located

125. Sprowl, *Computer-Assisted Legal Research—An Analysis of Full-Text Document Retrieval Systems, Particularly the LEXIS System*, 1976 AM. B. FOUNDATION RESEARCH J. 175, 175. This article is one of the best to date on computer-assisted research and has an excellent description of the LEXIS system.

126. See Dee & Kessler, *The Impact of Computerized Methods on Legal Research Courses: A Survey of LEXIS Experience and Some Probable Effects of WESTLAW*, 69 LAW LIB. J. 164 (1976).

127. Harrington, *What's Happening in Computer Assisted Legal Research?*, 60 A.B.A.J. 924 (1974).

128. Pezold, *Computerized Legal Research — An Arrival*, 10 TULSA L. J. 583, 584 (1975).

in the law library or law office. Third, the system is on a full time-sharing basis. The user need not wait in line to seek information from the computer, but can do so simultaneously with other users.

The major weakness of the LEXIS system may also be its strength. A full-text retrieval system involves "a one-to-one relationship between an individual's search ability and the case, code section, or administrative regulation."¹²⁹ This can mean individual frustration if the researcher is unable to locate the proper "search" word. Accordingly, the researcher must think the problem through carefully in order to develop the appropriate vocabulary for that particular problem. The research is made even more difficult because LEXIS still has a limited "library" of materials in its computer bank,¹³⁰ although the variety of available materials is growing daily. At the same time, the full-text retrieval system does not limit the researcher by the rigidity found in most law-indexing systems. Utilizing a full-text system also makes it much easier to search for cases containing similar fact situations because a full text of the facts is available if found in the reported cases.¹³¹

The WESTLAW system is very similar in function to the LEXIS system. The major difference is that WESTLAW is not a full-text retrieval system, but is equipped to retrieve key numbered topic and headnotes as found in the West key number and digest system.¹³² WESTLAW uses a descriptive word format, similar again to LEXIS, but the retrieved information gives the researcher a topic name, key number, casename, and citation.¹³³ All of the cases pertinent to the descriptive inquiry will be retrieved, although the researcher can limit the search as desired. This system has a unique advantage in that when the appropriate key

129. Dee & Kessler, *supra* note 126, at 165.

130. For example, in the federal "library," LEXIS presently only contains United States Supreme Court opinions since 1938, Court of Appeals opinions since 1945, and District Court opinions since 1960. In addition, limited cases from supreme, appellate, and district courts in fourteen states (Arizona, California, Delaware, Florida, Illinois, Kansas, Kentucky, Massachusetts, Missouri, New York, Ohio, Pennsylvania, Texas, and Virginia) are in the computer. On a still limited basis, LEXIS also has reported regulatory and judicial rulings in the federal tax, federal securities, trade regulation, and patent, trademark, and copyright areas.

131. Dee & Kessler, *supra* note 126, at 165.

132. Sprowl, *Computer-Assisted Legal Research: Westlaw and Lexis*, 62 A.B.A.J. 320, 321 (1976).

133. Dee & Kessler, *supra* note 126, at 178-79. Another similarity should be noted: both LEXIS and WESTLAW have small, easy to use terminals that can be placed without difficulty in the law library or law office.

number is found through the computer search a researcher can then go to the library and use the West system as desired, whether or not the materials are in the computer bank.¹³⁴ As with LEXIS, the information available through the WESTLAW computer system is still limited, although growing.

The impact that such systems will have on the study and practice of law is now only starting to be felt.¹³⁵ Legal research, often a time consuming proposition, can be made easier, and the time saved can be substantial with proper use of the computer. This ease of access to legal materials will allow an instructor greater flexibility in making out-of-class assignments and provide students a better opportunity to do supplementary research and reading on class discussion. Computers will also by necessity revolutionize the teaching of legal research as they assume a greater share of the research burden in schools and law offices. Also, the fact that larger numbers of law offices and government agencies will be obtaining computer terminals as they become more accessible and less expensive portends the day when classes on LEXIS and WESTLAW logic may be an essential part of a law school curriculum in order to better prepare the young lawyer to enter practice. These euphoric predictions must be tempered with the reality that computer-assisted research is no better than the available data base and the user. Until and unless the data bases of available systems are expanded, and a sufficient number of lawyers are trained to use the systems on a daily basis so that they become a natural appendage to legal research, computer research systems may remain no more than an expensive toy.

c. *Videotape teaching.* If we are entering the age of the computer, we must certainly have just passed through the age of television in this country because this "modern miracle" is now firmly ensconced as an essential ingredient of American life.¹³⁶ Television has long been recognized for its potential as an educational device. The Public Broadcasting System, for example, has endeavored for some time to provide programs of high educational quality; even the commercial stations have allowed periodic educational programming, including early morning university extension classes. It is also not uncommon to find television sets, which can be used for a variety of educational purposes, scattered throughout classrooms on a college campus. Yet, for

134. *Id.*

135. See Ehrlich, *Computers and Legal Education*, 14 JURIMETRICS J. 158 (1973).

136. For a masterful exploration of the impact of television on society, see M. McLuhan, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* (1965).

purposes of legal training, the use of television has been limited until the development of the portable videotape recorder.¹³⁷

A videotape system allows the user to record live activities and to quickly replay the recorded activity.¹³⁸ The basic tools for such "instant replays" are a portable camera, a television set, a videotape recorder, and the videotape itself.¹³⁹ With this equipment images and sound can be easily recorded and immediately replayed. The system's "mass production, low cost, simplicity, and unique ability to provide instant feedback has extended its use well beyond the area of broadcast television."¹⁴⁰ The convenience of being able to take the video recorder into classrooms or to other "live" locations without major support requirements has greatly increased its usefulness to the law instructor.

Whitman and Williams have identified four major areas where the videotape system can be useful in legal education: (1) recording events in the classroom for replay and future use; (2) recording of students as they engage in various mock and simulated activities; (3) involving and recording experienced attorneys in actual or simulated legal functions; and (4) recording actual activities taking place in courtrooms, administrative agencies, and other proceedings.¹⁴¹ With this type of educational flexibility, the instructor can use the recorded events for comment and criticism, providing students with feedback about their participation. That lack of feedback has been up to now a major ailment of the Socratic teaching method.¹⁴² The opportunity to see oneself perform, to have that performance criticized, and to engage in self-analysis may be one of the more effective methods available to teach the law student many necessary lawyering skills.¹⁴³ Beyond the immediately realizable benefits of videotape systems for legal education, Kornblum and Rush make the following prediction about their future impact:

The use of video technology in legal education programs is virtually unlimited. The day will arrive soon, particularly [sic]

137. Dresnick, *Uses of the Videotape Recorder in Legal Education*, 25 U. MIAMI L. REV. 543, 582 (1971).

138. *Id.* at 578.

139. For an excellent commentary on the technical requirements for a video system, see Whitman & Williams, *The Design of Videotape Systems for Legal Education*, 1975 B.Y.U.L. REV. 529, 535-41.

140. Dresnick, *supra* note 137, at 578 (footnote omitted).

141. Whitman & Williams, *supra* note 139, at 529-33.

142. Dresnick, *supra* note 137, at 549-50.

143. See generally White, *The Lawyer as Negotiator: An Adventure in Understanding and Teaching the Art of Negotiation*, 19 J. LEGAL EDUC. 337 (1967).

with the advent of more intensive post-J.D. specialty education programs required by a profession which is increasingly more specialized, when video programs will be beamed over closed circuit networks to law firms and reception centers throughout a state or even nationwide as an instructional tool for new associates or as a means by which lawyers can sharpen their skills and keep abreast of developing areas of the law.¹⁴⁴

Whether or not such predictions hold true, videotape technology is apparently well on its way to establishing itself as a useful adjunct to the teaching function in law schools and the postgraduate training of lawyers.

2. *Interdisciplinary training*

Interdisciplinary training as a component of legal education means many things to many people. It can refer to the growing numbers of joint degree programs being established between a law school and other departments within the university.¹⁴⁵ The purpose of such joint degree programs generally is to provide students an opportunity to specialize by combining law study with professional training in another field, often in less time than if students had pursued both programs separately.¹⁴⁶ Interdisciplinary training may also take forms such as law school offerings that emphasize behavioral or social science skills¹⁴⁷ or special research projects that require the law school to tap resources from throughout the university.¹⁴⁸ But whatever form it takes, interdisciplinary training is yet another recent program innovation in legal education.

144. Kornblum & Rush, *Television in Courtroom and Classroom*, 59 A.B.A.J. 273, 276 (1973).

145. For example, the bulletin for the Columbia University Law School lists special and joint programs in comparative law, international affairs, business, journalism, East Asian or Russian studies, public affairs, urban planning, urban affairs, and various options within the Graduate School of Arts and Sciences. COLUMBIA UNIVERSITY, *supra* note 44, at 71-77.

146. The announcement for Cornell University Law School indicates that for a combined J.D.-M.B.A. or -M.P.A. degree the student participant can complete the required work in the two fields "in four rather than the normal five years." CORNELL UNIVERSITY, CORNELL UNIVERSITY ANNOUNCEMENTS: LAW SCHOOL (Cornell University Announcements Vol. 68, No. 6, 1976).

147. Examples of such courses are law and literature, life sciences and law, law and economics, law and education. Variations of such offerings occur in many law schools. See D. JACKSON & E. GEE, *supra* note 17, at 34-35.

148. The University of Chicago Law School, for example, is supporting special projects in economics, criminal justice, legal history, behavioral sciences, and comparative law. UNIVERSITY OF CHICAGO, ANNOUNCEMENTS: THE LAW SCHOOL 40-42 (University of Chicago Announcements Vol. 76, No. 7, 1976).

As with many of the trends herein identified, interdisciplinary programming has received a mixed reception. On the side of interdisciplinary education, for example, Robert McKay has expressed some disappointment that legal education remains so rigidly "law" oriented:

The law schools have remained almost exclusively professional in tone, rejecting repeated attempts for the infusion of the social sciences and the humanities. In defense it is said that law is a "true science" which should not be diluted with the softness of the social sciences and the humanities.

The perception is scarcely new that law and the social sciences have much in common. The need for lawyers to comprehend the teachings of economics, anthropology, political science, and sociology is recognized—but too little acted on. It may be less commonly recognized, but surely no less true, that law is itself a social science. Law can be, and has been, studied as a social phenomenon. Techniques for dispute resolution, the designing of remedies in extended-impact cases, the effect of sentencing and parole procedures on the incidence of crime, and the impact of evidentiary rules upon human conduct all require that legal judgments be informed with behavioral knowledge from the social sciences.

The need of law for the humanities is equally pervasive, although law schools once did not clearly recognize the close relationship that must exist among law, justice, and humanity. . . . It is now recognized that law requires the enrichment and compassion of the humanities. Indeed, I will assert that law itself is a humanity, concerned as it must be with history, philosophy, language, and the moral instincts of man.¹⁴⁹

Charles Reich has expressed some of the same concerns in terms of role conflicts:

Many of the ills of legal education are symptomatic of the fact that it is primarily professional in orientation, although it should also be preparing students for lives of public service and scholarship. This confusion of goals is tacitly recognized, and an appearance of unity is maintained by the theory that all three are accomplished by the law schools' special way of training the mind. But the unity rings false, and the schools do not accomplish all that they undertake.¹⁵⁰

Another commentator has viewed interdisciplinary offerings

149. McKay, *Legal Education*, in *AMERICAN LAW: THE THIRD CENTURY* 263 (1976).

150. Reich, *Toward the Humanistic Study of Law*, 74 *YALE L.J.* 1402, 1402 (1965).

not as a salvation but as a diminution of the business of educating lawyers:

In many law schools, students are permitted to take as much as 10 per cent of their work outside the law school and in other branches of the university.

In the abstract, this is a laudable practice since it gives the students an opportunity to work in allied disciplines that will bring an added dimension to their law school training. Unfortunately, there is a vast chasm between the ideal and practice.

Many students at one prominent law school have exercised an interdisciplinary option to take a highly popular course in Creative Film Making, which, because it is offered on Wednesday nights, has become known as "Wednesday night at the movies." There is a place in the law school for an economist to add a new perspective to antitrust law and for a sociologist to work with the professor of criminal law, but surely there is no need for a film editor.¹⁵¹

The question posed by advocates and detractors of interdisciplinary legal education—whether lawyers should be trained as "policy-makers for the ever more complete achievement of the democratic values that constitute the professed ends of the American polity"¹⁵² or whether "we have spent to [sic] much time training policy makers and too little time training lawyers"¹⁵³—points forcefully again to the existing policy split between academicians and practitioners and emphasizes how this debate tends to permeate all levels of the decisionmaking process in legal education.

There is some evidence to indicate that those who contend that interdisciplinary work will adversely affect the training of lawyers have little to fear. Students are not stampeding to take interdisciplinary courses in the law school¹⁵⁴ nor to enroll in joint degree and specialized programs.¹⁵⁵ At the moment not only do interdisciplinary programs suffer from this gap between professorial preference and student disinterest but other problems threaten to emerge in the programs' developing stages:

151. McLaughlin, *Law Schools Must Demand That Students Learn Law*, B. LEADER, July-Aug. 1975, at 18-19.

152. Lasswell & McDougal, *supra* note 10, at 206.

153. Kauper, *Reflections on 4 Years of Government Service*, U. MICH. L. QUADRANGLE NOTES, Winter 1977, at 18.

154. D. JACKSON & E. GEE, note 17 *supra*.

155. Myers, *Education of Present and Future Lawyers*, in *LAW AND THE AMERICAN FUTURE* 179, 184-85 (M. Schwartz ed. 1976).

[C]ompilation of useful teaching materials will be difficult and expensive; administrative problems will be aggravated; there will be difficulty in finding lawyers competent in some field outside the law, or nonlawyers willing to break away from the routine of their respective disciplines and learn about the problems and thoughtways peculiar to the legal profession.¹⁵⁶

Despite these problems, reality dictates that there will be an increasing interest in interdisciplinary programming as a closer nexus between law and other allied disciplines naturally develops. For example, as courts take on greater policymaking roles ("boards of education of last resort") and lawyers assume more nontraditional lawyer roles (e.g., public and private administrative positions), certain skills of an interdisciplinary nature may become mandatory. In addition, many law schools are expanding the scope of their function from one of pure education to that of education and service. These so-called "legal centers" will house people with a variety of skills requiring interdisciplinary cooperation.¹⁵⁷ Finally, the concept of "legal studies" is expanding to mean more than the education which takes place within the confines of a law school. As legal studies programs extend into undergraduate and other graduate curricula, they will take on a decidedly liberal arts and interdisciplinary flavor due in part to divergent faculty backgrounds as well as student interest.¹⁵⁸ This movement toward interdisciplinary activity is only further recognition that the notion of law being made in a vacuum, and the lawyer being trained in that same vacuum, does not accurately reflect the times in which we live.

3. Skills training

There is by no means universal satisfaction with the kind and frequency of "skills courses" presently offered by most law schools. As Paul Savoy attests:

156. Gorman, *Proposals for Reform of Legal Education*, 119 U. PA. L. REV. 845, 847-48 (1971). For additional discussion of some of the problems affecting a "combination of law and other disciplines," see *Assessment Conference: Developments in Law and Social Science Research*, 52 N.C.L. REV. 969 (L. Walker dir. 1974); Cavers, *Non-Traditional Law-Related Studies and Legal Education*, 50 DEN. L.J. 395 (1974); Hazard, *Law School "Law" and Sociological Research*, 50 DEN. L.J. 403 (1974).

157. See Cavers, *The Legal Center Concept: Substance or Semantics?*, 41 TENN. L. REV. 1 (1973). See also Willrich, *The Law School as a Base for Interdisciplinary Studies in a University*, 26 J. LEGAL EDUC. 213 (1974).

158. For an excellent discussion of undergraduate legal studies programs, see *Undergraduate Legal Education*, 28 J. LEGAL EDUC. 1 (1976).

There is not a single lawyer I know with whom I went to law school who feels that his legal education adequately prepared him for the practice of law (or anything else for that matter). My experience in one of the larger post-graduate educational institutions in America—the New York District Attorney's Office—was sobering. Trying to reconstruct an incident from interviews with witnesses; awakening to the ritualistic performance of police officers on the witness stand; plumbing the subtleties of the plea-bargaining process; learning the nuances of communication between judges and attorneys, I became suddenly aware of the unforgivable irrelevance of my legal education to what was happening in my head, in the courtroom and in the streets of our cities. The first case I tried was a numbing experience. My only consolation was that the Legal Aid lawyer who represented the defendant was as woefully untutored as I. Together, we waged a relentless battle of almost metaphysical absurdity: the implacable innocence of Charlie Brown versus the invincible ignorance of Lucy.¹⁵⁹

Savoy's criticism of the "irrelevance" of legal education is representative of the growing chorus of concerns¹⁶⁰ about whether law graduates "lack the practical knowledge, skill and ingenuity essential to effective performance in the role of a practicing attorney."¹⁶¹ In response to this criticism, many law schools have turned some of their attention, and a good deal of their resources,

159. Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444, 446 (1970).

160. Judge Jerome Frank in a series of speeches and articles was one of the early opponents of the "drift" toward theoretical university-based legal education. See Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947). More recent criticism can be found in Cooper, *The Law School Way*, 27 J. LEGAL EDUC. 268 (1975); Kaufman, *Advocacy as Craft—Law School Is More Than a "Paper Chase,"* 60 A.B.A.J. 802 (1974); Richardson, *Does Anyone Care for More Hemlock?*, 25 J. LEGAL EDUC. 427 (1973); Watson, *The Quest for Professional Competence; Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968).

Cooper was so exercised by the lack of skills training in law school that he turned his frustration to poetry:

There was a scholar in our school
and he was wondrous wise
He jumped into the LAWYER'S WORLD
scratched his head and opened
his eyes
And when he saw that he was blind
with appreciation and disdain
He asked a former law professor
what was the purpose of all the
pain.

Cooper, *supra* at 268.

161. Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140, 140 (1971).

to training fledgling lawyers in practical lawyering skills, such as advocacy and drafting, through other than traditional classroom methods.¹⁶²

The purpose of such skills training courses is both to instill in students an awareness of the problems faced by a practicing lawyer when dealing with a "live" issue and to equip students with the basic tools necessary to plan and implement a solution. In the traditional classroom coursework, a law student is taught to ask "What does the court want?" and "What are the competing arguments for each issue?" In the skills training courses, the focus of the student questions are "What must be done to assure the right result?" and "What are the proper forms or pleadings to be used to solve the problem?"¹⁶³ Accordingly, skills training courses are, or should be, designed to build upon theoretical models in order to give a practical dimension to that theory, but such courses in no way are meant to displace or de-emphasize the theoretical component of the curriculum.

It is at this point where the greatest concerns arise because of the divergent opinions as to what is too much theory or too much practicum. For example, if it were agreed that every lawyer should be taught how to draft certain legal documents, it could be argued that these drafting skills should be taught after graduation from law school in some bar-sponsored program. To require a law school to effectively teach legal drafting to every student may mean an allocation of vast and unavailable resources and, in the end, diminish the course offerings in other areas in which law schools *are* uniquely equipped to make viable contributions.¹⁶⁴ Unfortunately, an easy resolution to the problem is not readily apparent. As long as law schools must measure the learning-teaching process in terms of finite academic semesters and credit hours, the line between requirements in theoretical instruction and skills training will be difficult to draw due to curriculum pressures exerted by an expanding substantive law.¹⁶⁵

162. D. JACKSON & E. GEE, *supra* note 17, at 47-48. This study shows that law schools are now allocating a substantial percentage (8.51%) of the total elective hours to skills training courses.

It should be noted that skills training refers to those courses which provide practical "how-to-do-it" training but do not involve the clinical or fieldwork components as are found in clinical legal education offerings. Examples of courses that are of a skills training nature are civil trial practice, criminal trial practice, counseling and negotiations, drafting legal papers, moot court, and techniques of advocacy.

163. See Gorman, *supra* note 156, at 847.

164. See generally Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A.J. 447 (1976).

165. Vukowich, *supra* note 161, at 145.

The plaintive plea of an exasperated pedagogue will always be: "But they can't leave law school without a course on melting polar icecaps, drought, energy, and the law."

Even if there were a general consensus that law schools ought to teach students more lawyering skills, it is not an easy task to reach agreement on what these transmitted skills should be. As Boyer and Cramton note:

The problem of defining, analyzing, and teaching legal skills is one that has long troubled the profession for several obvious reasons. Because law is a pervasive institution, touching virtually every field of human activity, it is difficult to conceive of an ability or an area of knowledge that would not be useful, at least to some lawyers some of the time. Thus, the problem of defining the skills or competencies required by lawyers essentially becomes a matter of finding common denominators and making generalizations about the work of lawyers. . . . Everyone who has addressed the problem of defining lawyers' skills has had no choice but to extrapolate from his own experience and knowledge, and as a result there has been little agreement beyond the tautological observation that the fundamental skill acquired by law students is "learning to think like a lawyer."¹⁶⁶

Skills training efforts have taken many forms within the law school curriculum with varying degrees of success.¹⁶⁷ Some schools have responded to the call for practical training by hiring a practicing attorney, full or part time, and putting him in a lecture hall where "war stories" become the daily regimen. This kind of "skills training" requires little thought and commitment on the part of the law school and even less educational talent on the part of the instructor. From such programs has grown the reputation that practice courses are academic weaklings.¹⁶⁸ This approach can be contrasted with the well-designed and well-implemented program in which the student is given an opportunity to perform lawyering tasks in a controlled atmosphere and under close supervision.¹⁶⁹ Although such courses are an expensive alternative to

166. Boyer & Cramton, *supra* note 27, at 270 (footnote omitted) The majority of concerns have been expressed by commentators over a lack of preparation in "trial advocacy." See Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973) (4th Annual John F. Sonnett Memorial Lecture); Kaufman, note 160 *supra*.

167. McElhaney, *Toward the Effective Teaching of Trial Advocacy*, 29 *U. MIAMI L. REV.* 198, 201-03 (1975).

168. J. McELHANEY, *TEACHERS MANUAL FOR EFFECTIVE LITIGATION* 1 (1974).

169. See Ordovery, *An Experiment in Classroom Litigation*, 26 *J. LEGAL EDUC.* 98 (1973).

the "war stories" approach, a law school must be willing to commit the necessary resources to assure success if academically sound skills courses are to be established. Skills courses are best taught in settings with low student-faculty ratios and by experienced teachers and practitioners.¹⁷⁰ Perhaps in no one area of legal education will resource commitment and results be so directly related.¹⁷¹

4. *Clinical legal education*

The single most significant event to occur in legal education during the past decade has been the growth and development of clinical legal education programs in this country.¹⁷² The following table, taken from a survey of clinical legal education programs conducted by the Council on Legal Education for Professional Responsibility (CLEPR), vividly illustrates this phenomenal growth.¹⁷³

Clinical Legal Education 1970-1976								
	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	
No. of Schools Reporting	100	110	117	115	127	134	139	
No. of Programs (Credit Granting)	169	231	324	315	346	419	494	
Fields of Law	14	21	30	34	41	49	57	
Percentage of Change: 1970-1976								
No. of Schools							+ 39%	
No. of Programs							+192%	
Fields of Law							+307%	

The impact of clinical legal education on law schools is most clearly indicated by the substantial increase in the number of programs (192%) and field of law (307%) being taught in a clinical setting between the academic years 1970-1971 and 1976-1977.

170. Myers, *supra* note 155, at 186-87; see Silverman, *The Practitioner as a Law Teacher*, 23 J. LEGAL EDUC. 424 (1971).

171. For a discussion of the problems of resource allocation to skills training and clinical programs, see notes 222-27 and accompanying text *infra*.

172. McKay, *supra* note 149, at 273. For a good review of the history of legal education and its clinical components, see Section III *supra*; Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974); Stevens, *Legal Education: Historical Perspectives*, in CLINICAL EDUCATION FOR THE LAW STUDENT 43 (1973).

173. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION: 1976-1977, at xvi (1977) [hereinafter cited as CLEPR].

With such wide apparent acceptance as an educational tool, the unsuspecting reader could conclude that clinical legal education is no longer an innovative trend but a secure alternative to the traditional case method. From soundings within the legal education community such a conclusion would be overly optimistic:

It is precise, though, to say that clinical legal experience, with very limited exception, is permitted and tolerated in legal education as a peripheral enterprise. It is at most adjunctive to the traditional core of legal training and is afforded limited credibility (in fact, limited credit) toward educational completion. This tenuous commitment to clinical legal education may reflect a feeling that clinical work lacks intellectual character. As Professor Edmund Kitch of the University of Chicago Law School observes, in prefacing the report of a conference on the subject, "the central argument for clinical education is compelling but deceptive in its simplicity." Clinical education is seen to be practice without theory, the antithesis of a traditional reliance on and bias for concepts in learning law. It has, in any case, yet to establish that it is self-supporting, or that it will be supported, even in its current, limited manifestation, once its philanthropic underwriting disappears.¹⁷⁴

The failure of clinical legal education to fully enter the mainstream of educational programming in law schools is not so much an indictment of clinical education by legal educators as it is yet another testament to the truism that innovation is difficult in legal education.

Clinical legal education has been defined in a general way to be that bundle of law school educational opportunities having a practical or "real" or client service component to them.¹⁷⁵ Defined as such, clinical legal education can describe

large course lectures on trial advocacy by practitioners; legal aid; externships away from school in a variety of law offices, such as prosecutors, public defenders, OEO (Office of Economic Opportunity) legal services, and public interest law firms; and highly individualized instruction in such practice skills as interviewing clients and witnesses, negotiating settlements, arguing motions, and conducting trials.¹⁷⁶

Much of this either can be done with little commitment on the

174. Redmount & Shaffer, *supra* note 110, at 962.

175. *Id.*

176. Myers, *supra* note 155, at 185.

part of the law school or is already a natural appendage of the traditional curriculum.

Clinical legal education has also been given a much narrower definition by William Pincus, head of CLEPR: "[L]awyer-client work by law students under law school supervision for credit toward the law degree."¹⁷⁷ The Pincus definition is not ambiguous. It assumes that, in order for clinical legal education to adequately train law students in lawyering skills, such training must be done in a service setting, with proper supervision from well-qualified instructors and with appropriate academic recognition of the worth of such activities by the granting of law school credit.¹⁷⁸

As long as clinical legal education could be broadly described to include any applied-skills activity in which students participated, there was little tension between academicians and clinicians. It was only when there was an attempt to integrate clinical legal education into the curriculum with all of the appropriate trappings, as the Pincus definition suggests, that concerns were heightened to the point that academic blows were exchanged.¹⁷⁹ Predictably, it was not threatening to let clinical activities take place in the neighborhood; it was only when someone suggested that they be invited into the house that problems occurred.

Once the rhetoric from the proponents and opponents of clinical legal education is put in perspective, it becomes readily apparent that clinical legal education, like many other innovative formats, has much to offer if cautiously pursued and properly implemented. The major goal of clinical education—to force a student “to see the world through the eyes of a practicing lawyer”¹⁸⁰—is laudable. To reach that goal students are provided opportunities to develop lawyering skills by working on “live” problems involving “real” people. One observer has developed a list of skills that are often employed by law students in a clinical setting:

177. Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479, 479 (1976).

178. See generally Pincus, *Legal Education in a Service Setting*, in CLINICAL EDUCATION FOR THE LAW STUDENT 27 (1973).

179. The recent literature on legal education abounds with comments favoring or opposing the integration of clinical work into the curriculum. See, e.g., Allen, note 164 *supra*; Brickman, *CLEPR and Clinical Education: A Review and Analysis*, in CLINICAL EDUCATION FOR THE LAW STUDENT 56 (1973); Gorman, *Clinical Legal Education: A Prospectus*, 44 S. CAL. L. REV. 537 (1971); Meltsner & Schrag, *Report From a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976); Spring, *Realism Revisited: Clinical Education and Conflict of Goals in Legal Education*, 13 WASHBURN L. REV. 421 (1974).

180. Meltsner & Schrag, *supra* note 179, at 584.

1. Client interviewing and counseling: this includes diagnosing the problem, making appropriate referrals when necessary to professionals of other disciplines, such as social workers and psychiatrists, and functioning on occasion as part of an interdisciplinary team.
2. Fact-gathering and sifting.
3. Legal research into the problem.
4. Decision-making about alternative strategies.
5. Negotiation.
6. Professional responsibility—application of ethical canons to specific cases.
7. Preparation for trial and appeal; advocacy before tribunals.
8. "Packaging" a business arrangement or community development project, or planning one's personal affairs, including the drafting of legal documents.¹⁸¹

Many of these skills, all of which are important to the practicing lawyer, are not taught in traditional law school courses. The student-participant has the opportunity while gaining these skills to view firsthand the workings of the various judicial and administrative systems. This experience allows the student-participant

to gain understanding about the behavior of judicial and other governmental officials in areas where there are noteworthy delegations of discretion, and to evaluate the impact of that discretion on people, especially (but not exclusively) on those whose will or resources to resist a particular official's actions are not very great.¹⁸²

An early-on understanding of the functioning of governmental agencies will serve the young lawyer and his client well; more importantly, however, that understanding will provide a basis from which informed decisions concerning possible restructuring and reforming of our system of justice can be made.¹⁸³ All too often, once leaving law school and entering a specialized practice, the lawyer does not have an opportunity to experience the "system" from the same perspective as he did while working in the law school clinic.

Clinical legal education has a strong service component. Many of those to whom legal services are provided by law school clinics are the poor who cannot generally afford competent legal

181. Ferren, *Goals, Models and Prospects for Clinical-Legal Education*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 94, 94-95 (E. Kitch ed. 1969) (The University of Chicago Law School Conference Series No. 20).

182. *Id.* at 95.

183. *Id.* at 96.

counsel, but who are often in desperate need of such help.¹⁸⁴ The law school clinic with its student-attorneys can help fulfill the legal needs of heretofore unrepresented groups and meet unresolved legal problems in the community. At the same time, exposure of these students to differing lifestyles and backgrounds can help diminish stereotyping and destroy prejudices.¹⁸⁵ Through this service component "[c]linical legal education rehumanizes the educational process and reminds the professional-to-be that his services are personal services in the literal sense of the word and that a primary part of professional responsibility is the capacity to respond on a one-to-one basis to another human being's need for help."¹⁸⁶ In the end, it may be the student, rather than the client, who receives the greater service.

As a pedagogical tool, clinical legal education has much to offer *in addition* to the skills training aspect already noted. It has taken the study of law out of the appellate case arena by emphasizing the host of tasks that a lawyer must perform in a variety of settings, whether in a trial court, in an administrative agency, or across the negotiating and counseling table.¹⁸⁷ In so doing, clinical education also allows the instructor to make useful links between practice and theory based upon problems encountered by the students. In turn, students are encouraged to drink deeper of the substantive and the theoretical because they are no longer required to set this information forth in yet another "unreal" task, the "blue-book" examination, but must do so in the presence of clients and colleagues.¹⁸⁸ It cannot be gainsaid that infusing reality into the study of law will not only motivate the student to further study but will also work against that most common of afflictions: the "third-year doldrums." Finally, instructional issues raised by clinical problems force law school instructors to develop new and creative study materials which draw not only from the classic legal literature but also from other disciplines and which provide students with a greater awareness of the fusion of law and social inquiry.¹⁸⁹ With alternative instructional materi-

184. Kitch, *Forward to CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 15 (E. Kitch ed. 1970). Another aspect of this service component should be noted: Law school clinics may often represent unpopular causes or clients who otherwise would have difficulty finding competent counsel.

185. *Id.* at 16-17. See also Conard, "Letter From the Law Clinic," 26 J. LEGAL EDUC. 194, 205-07 (1974); Gorman, *supra* note 179, at 553.

186. Pincus, *supra* note 177, at 483.

187. Myers, *supra* note 155, at 185.

188. Gorman, *supra* note 179, at 553.

189. See, e.g., H. EDWARDS & J. WHITE, *THE LAWYER AS A NEGOTIATOR* (1977) (representing an attempt to develop materials to be used in a variety of pedagogical settings

als, the study of law can take on a variety of functions rather than the unidimensional focus found in the traditional Cases and Materials on “ .”

Perhaps the most unique contribution made by clinical legal education to the study of law is that the student participant is constantly confronted with professional responsibility questions.¹⁹⁰ As Meltsner and Schrag note:

Issues of professional responsibility also loom large on the clinical agenda. The most important ethical issues are not the ones easily resolved by resort to the Code of Professional Responsibility (issues that occur in disciplinary proceedings), but the ones lawyers typically face very day. Should they drown adversary litigators in a sea of paperwork, lie to adversaries for bargaining advantage, or decide, as a legal aid lawyer, to represent one type of client rather than another when resources are too scarce to represent both? Clinical courses are superior vehicles for sensitizing students to these issues, because the student must actually make a choice among competing options. Unlike the student in a classroom, he cannot stop after pointing out the risks and costs inherent in each available course of action, but must actually select one of them, execute it, and incur the associated costs. His decision may well be irreversible, and he will have to live with its consequences for weeks or months thereafter.¹⁹¹

Rarely if ever do professional responsibility issues rise to more than an academic level in the classroom setting. Students confronted with “live” issues, on the other hand, have the opportunity to work through the problems with a senior lawyer and to hold postmortems with fellow law students and instructors concerning appropriate responses in similar situations.¹⁹² Of equal value is the sensitivity and awareness gained by a student that the lawyer is indeed constantly faced with ethical and moral dilemmas. This sensitivity can extend to a variety of other issues, including “the role of the lawyer in law reform, the structure and functions of the legal profession, [and] the pressing problems of legal services to the poor.”¹⁹³ When all else has failed, there may come the realization that professional responsibility *is* experience and therefore must be taught through that medium.

including clinical teaching). See also M. MELTSNER & P. SCHRAG, PUBLIC INTEREST ADVOCACY: MATERIALS FOR CLINICAL LEGAL EDUCATION (1974).

190. See LAWYERS, CLIENTS & ETHICS (M. Bloom ed. 1974).

191. Meltsner & Schrag, *supra* note 179, at 585-86.

192. Gorman, *supra* note 179, at 552-53.

193. *Id.* at 553.

With such obvious strengths, it is difficult at first blush to understand why many think clinical legal education deserves a second-class academic position. Yet the complaints against clinical legal education are legion.¹⁹⁴ Many have been snipings without substance, but some are legitimate concerns that must be addressed by clinical proponents. One of clinical legal education's major problems is that it presently lacks definition.¹⁹⁵ Redmount suggests that "[i]f, in fact, the strength and thrust of clinical legal education lies only in its protest and in its value emphases, it may slightly affect the structure of formal legal education, but it lacks the ideas and the tools for any more permanent movement and impact."¹⁹⁶ At present there are almost as many views of what the focus of clinical work should entail as there are clinicians.¹⁹⁷ Some believe that clinical legal education ought to be rooted in a "Don Quixote" tradition with a phalanx of students advancing against societal ills. Others view the clinic as a service organization established to provide legal services to the poor and unrepresented. Yet others believe that clinical legal education should have the sole function of teaching a student "how-to-do-it" skills. Naturally, with this diversity of goals comes a variety of teaching formats through which the goals are to be achieved:¹⁹⁸ "farm out" concepts whereby students are given opportunities to work with various agencies such as the public defender or the district attorney; neighborhood law offices established by the law school and manned by practicing attorneys and law students; and law clinics within the law school that provide a variety of service and educational functions under the supervision of faculty members.¹⁹⁹ These formats also entail various theories of supervision and clinical-classroom teaching components.²⁰⁰ This criticism should not be read as advocating a monolithic approach to clinical legal education, but a failure to more adequately define the goals and function of clinical legal education certainly leaves it vulnerable to charges of "confused objectives."²⁰¹

194. For a catalogue of some of the more prevalent complaints against clinical legal education, see Gorman, *supra* note 179, at 555-61; Grossman, *supra* note 172, at 176-80.

195. Spring, *supra* note 179, at 428.

196. Redmount, *The Transactional Emphasis in Legal Education*, 26 J. LEGAL EDUC. 253, 259 (1974).

197. See Spring, *supra* note 179, at 428-29.

198. See CLEPR, *supra* note 173, at xvii-xix.

199. Spring, *supra* note 179, at 428-29. The listed clinical models represent major formats of which there are several variations. See Ferren, *supra* note 181, at 98-104.

200. CLEPR, *supra* note 173, at xvii-xix.

201. Hazard, *Report*, in PROCEEDINGS: THE ASHEVILLE CONFERENCE OF LAW SCHOOL DEANS ON EDUCATION FOR PROFESSIONAL RESPONSIBILITY 116, 119-20 (H. Sachs ed. 1965).

Clinical legal education programs also pose a series of pedagogical problems. While "[c]lose supervision seems to be a real *sine qua non* for skills training,"²⁰² there is a good deal of evidence showing that many clinical legal education participants receive less than adequate supervision.²⁰³ To those in "farm out" clinical programs, this lack of supervision can be attributed to a variety of factors, including heavy case loads and administrative duties or a lack of interest on the part of the assigned supervisors. Because these supervisors are often doing the law school a "favor" without compensation, the school can exert little pressure for improvement. In-house clinics may also suffer from a dearth of proper supervision, due mainly to an overextension of the clinic's capabilities created by high student demands and expectations, heavy administrative burdens, and insufficient support for instructors, materials, facilities, and other services from the law school administration and faculty. Lack of proper supervision can also be brought about by mixed clinical goals, as for example, when it is not clearly decided if the clinic is established to serve primarily its clients, the students, or both. Often the educational function is consumed by the service function.²⁰⁴ When the educational and supervision components of clinical education are effectively renounced,

[c]linical programs [have then degenerated] into a grandiose abdication of responsibility whereby the law school simply abandons the student during the third year and leaves him largely to his own devices under the guise of affording him "practical experience." It must become a joint venture in discovery for the academic community where undigested chunks of reality are subjected to the most highly disciplined form of intellectual scrutiny.²⁰⁵

A lack of proper supervision will most likely mean that students will spend their efforts on routine and meaningless projects with little prospect for intellectual growth.²⁰⁶

202. H. PACKER & T. EHRLICH, *supra* note 53, at 43.

203. The 1976-1977 annual survey of clinical program by CLEPR shows that 26.8% of the clinical experiences reported were in non-law school supervised settings. CLEPR, *supra* note 173, at v-vi; see Redlich, *Perceptions of a Clinical Program*, 44 S. CAL. L. REV. 574, 615-17 (1971).

204. Gorman, *supra* note 179, at 559.

205. Cahn & Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005, 1030 (1970).

206. Cavers, *Report on Evaluation of Selected NCLC Project by Ford Foundation Evaluation Group*, in PROCEEDINGS: THE ASHEVILLE CONFERENCE OF LAW SCHOOL DEANS ON EDUCATION FOR PROFESSIONAL RESPONSIBILITY 97, 102 (H. Sachs ed. 1965).

Clinical legal education programs tend to be voracious consumers of student and faculty time. This time pressure can create difficulties for students who may momentarily be involved in time-consuming (and interesting) clinical activities but yet are under pressure to attend and be prepared for other courses. Likewise, clinical activities do not heed academic timetables, often creating conflicts when students must be in court and in class at the same time.²⁰⁷ If a clinical instructor is also teaching a scheduled class, the same type of conflicts can occur. A number of schools have solved many of these problems by moving to the clinical semester concept wherein a total semester of a student's time is devoted to clinical work.²⁰⁸ Yet conflicts will inevitably occur as long as academic scheduling remains relatively inflexible while clinical assignments must meet with human needs.

The academically unorthodox aspects of clinical programming cause difficulties with such orthodox matters as grading and evaluation. Clinical legal education participants are not easily graded by traditional standards because of the eclectic nature of the activities in which they are involved during the course of a clinical experience.²⁰⁹ A research project or a written examination fits the typical grading model hand in glove—lawyers' activities simply do not. Although there are various projects and proposals presently underway that are attempting to create adequate evaluation techniques of lawyering skills,²¹⁰ until their worth is proven this lack of ability to evaluate lends credibility to the claims that clinical programs are educationally anemic. Any suspicion that students are receiving a "free ride" in clinical programs also makes law faculties reluctant to grant more than limited credit for clinical courses.²¹¹

Clinical legal education continues to have difficulty shedding its poverty law image.²¹² It has long been recognized that "[u]nless, over a period of time, clinical experiences are developed opening all avenues of experience for students interested in all branches of the law and all segments of society it is doubtful that clinical programming will become a significant feature of

207. See generally White, *The Anatomy of a Clinical Law Course*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 158, 167-69 (E. Kitch ed. 1970).

208. CLEPR, *supra* note 173, at xii.

209. Kelso, *Testing Generally in the Law and in Clinical Programs*, in THE EDUCATION AND LICENSING OF LAWYERS 129, 137-42 (1976).

210. *Id.*

211. See CLEPR, *supra* note 173, at x-xi.

212. Gorman, *supra* note 179, at 561.

legal education.”²¹³ Certainly an awareness of the needs of the poor is a commendable goal for clinical programs, but to limit clinical experiences to poverty issues will make it difficult to develop links between the whole gamut of practice opportunities and legal theory.²¹⁴ It must be noted that the narrow focus of clinical opportunities is not the sole blame of the law schools: some bar associations have been reluctant to allow students to practice on middle-class client problems because of a perceived economic threat.²¹⁵

Perhaps no more plaintive cry for help can be heard from the law clinic than that of the clinical law teacher.²¹⁶ He is often overworked, underpaid, and granted second-class status. In the words of one observer:

While the general public has paid and will continue to pay for the incompetency of young graduates, the clinical teachers who represent the fledgling efforts of law schools to provide some competency training individually are paying a price. A clinician's status among his colleagues, for example, is that of a second-class citizen. While his colleagues hold nine-month appointments and lucrative outside consultantships, he is usually a 12-month appointee and has little time for anything other than his clinical work. Where most of his colleagues originally have been hired on the so-called "tenure track," he is usually a temporary 12-month appointee.²¹⁷

Fighting such odds, law school personnel committees find it difficult to attract well-qualified clinical teachers. Once the instructors are hired, however, signals are sent out by the law school indicating that survival is dependent upon meeting traditional academic criteria, including researching and publishing.²¹⁸ Often because clinical programs make daylong and weeklong demands on instructors, any attempts at publishing may actually diminish an instructor's effectiveness in the clinic. With such pressures the "burnout" result is high, with many clinicians seeking to move

213. Leleiko, *Legal Education—Some Crucial Frontiers*, 23 J. LEGAL EDUC. 502, 516 (1971); see Pincus, *supra* note 178, at 37.

214. There is some evidence that clinical legal education is breaking out of the poverty law mold. A 307% increase in the fields of law being taught in clinical programs has occurred over the past seven years. CLEPR, *supra* note 173, at xvi. Many of the fields of law are represented by only one or two clinical programs, but such a dramatic increase cannot be ignored.

215. Brickman, *supra* note 179, at 81.

216. Pincus, *supra* note 177, at 490-91.

217. Oliphant, *When Will Clinicians Be Allowed to Join the Club?*, LEARNING AND THE LAW, Summer 1976, at 36.

218. See *id.* at 36-37.

into more traditional academic roles or to "escape" back into the world of practice.²¹⁹ Much of this difficulty is to be expected given the status quo orientation of legal education. On the other hand, it can be argued that the clinical law professor will slowly enter the academic mainstream as a matter of course when clinical legal education becomes a firmly established component of a lawyer's training.²²⁰ Be that as it may, if clinical programs are to be successful, and much of that success depends on the effectiveness of the instruction, "greater flexibility in faculty workloads and career patterns" must become the norm.²²¹

Finally, the single greatest concern facing clinical legal education is money.²²² In a period of financial retrenchment in educational institutions generally, any program seeking a massive infusion of funds will have difficulty surviving. One observer suggests that the issue of

whether or not clinical education will occupy an important place in the law school of the future cannot be answered simply by concluding that clinical education offers rewarding experiences in fulfillment of several important educational objectives. The crucial question is more complex and more difficult: do the benefits from clinical education programs exceed the costs?²²³

Proponents of clinical education see the answer as a clear "yes." They do not deny the high cost of worthwhile clinical training, but see the cost-benefit analysis in terms of a competent bar. In the words of one clinical education advocate:

Unlike medical schools which realized the absolute necessity of intense student clinical training decades ago, law schools adopted a cheap teaching model in which one lecturer commonly "teaches" a class of over 100 students. Not only has the model resulted in the production of incompetent graduates on graduation day, but it has encouraged the development of private and public law schools which financially profit by following the traditional teaching approach. The market is becoming glutted with untrained lawyers because of the law school educational model.

Law schools which have traditionally "made money" will be extremely reluctant to adopt a teaching model requiring the addition of expensive experienced faculty and an enormous re-

219. *Id.* at 37.

220. Hazard, *supra* note 201, at 119.

221. Gorman, *supra* note 179, at 565.

222. *Id.* at 558; see Spring, *supra* note 179, at 428; Pincus, *supra* note 177, at 489-91.

223. Kitch, *supra* note 184, at 20-21.

duction in the student/teacher ratio. . . .

. . . While law school thinkers ponder which way to go, the general public remains at the mercy of an increasing number of unskilled lawyers. It is an enormous price to pay.²²⁴

Those more skeptical of the educational value of clinical legal education point out that the reality of economics dictates a probable decrease in proven programs, classes, and seminars to pay for the increased clinical commitment.²²⁵ Furthermore, even present costs are arguably excessive because it is doubtful that

clinical education is *the* solution that many of its proponents claim it to be or that it should be *the* dominant trend of legal education in the future. We [Packer and Ehrlich] are also concerned that an anti-intellectual tendency of clinical education will offer an allure to students and to some faculty members who seek "relevance" at any price.²²⁶

This price would be the elimination of promising experimentation in other pedagogical areas that could add great depth to the training of lawyers. In the end, all that can be said with assurance about this debate is that, "[a]bsent an infusion of funds in sizeable amounts, law schools will be unable to provide more than a small number of thorough clinical courses, reaching relatively few of their students."²²⁷

D. *Legal Education and Bar Admissions*

One commentator has suggested that an inevitable tension "exists between a practicing profession and a university-based system of legal education."²²⁸ There is growing evidence that this tension has developed into a sharp conflict:

The tolerance and mutual forbearance on which the American system of legal education is founded and on which its prior achievements are based are being subjected to serious strain. This evidence goes beyond the advocacy, in and out of the law schools, in favor of some greater concentration on practical lawyer skills in the professional curriculum. Dialogue concerning the methods and emphasis of law training always has existed and is indispensable to the continuing adaptation of legal edu-

224. Oliphant, *supra* note 217, at 37.

225. Vukowich, *supra* note 161, at 147-48.

226. H. PACKER & T. EHRLICH, *supra* note 53, at 46.

227. Myers, *supra* note 155, at 187.

228. Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A.J. 447, 449 (1976).

cation to the world in which it finds itself. In recent years, however, attitudes of impatience and hostility toward the law schools have been expressed in some segments of the practicing bar.²²⁹

It must be admitted that this mounting frustration with legal education on the part of many members of the profession may well be no more than a reflection of increased public pressure in this post-Watergate era for competency and responsibility in the profession. Sensing this public dissatisfaction, lawyers blame the perceived source of their ills: the law school. Yet much of this criticism may also reflect a genuine concern on the part of the profession about the form and focus of legal education. From whatever the source and motivation, many of the complaints have substance and must be addressed by the legal education community. Probably no one can read this study without realizing that many legal educators are alert to criticism. They are concerned about their profession and have often been their own worst critics. Unfortunately, many times their concerns and priorities are not those of the public and the profession. It is this pressing desire to reach a unity of goals that has forced the bench and bar to take more militant action through increased bar admission requirements and other related devices to influence the priorities of law schools. Given the nature of law professors and those whom they have trained, any such attempts to assert direct control over the legal education process will likely lead to a long winter of discontent.

1. *New directions in bar examinations*

Bar examinations are much maligned. Leon Green in his now classic commentary on bar examinations concluded:

I cannot find a single substantial support for reliance upon mass bar examinations as a basis for license to practice law. On the other hand it is my conviction that bar examinations as a method of protecting the profession and community hold out assurances not warranted and produce results pernicious in the extreme.²³⁰

A number of possible "pernicious results" have been identified by bar examination antagonists: (1) Bar examinations do not test "the young lawyer's range of experience and capacity for making

229. Allen, *The Prospects of University Law Training*, 63 A.B.A.J. 346, 347 (1977).

230. Green, *Why Bar Examinations?*, 33 ILL. L. REV. 908, 911-12 (1939) (now Nw. U.L. Rev.).

judgments" nor are they "designed to test the power a student has gained as a result of his legal training."²³¹ (2) Bar examinations have a tendency to turn law schools into high-powered cram courses by forcing students to make curricular choices based upon subjects tested rather than on need or merit.²³² (3) Because of their limited nature and focus, bar examinations tend "to hold our law school methods of instruction and our teaching materials within narrower limits than are required by the needs of the profession for a diversified and expanding range of knowledge and competencies and for the breadth of perspective necessary to evaluate the law's principles, institutions and institutional relationships."²³³ (4) Bar examinations may be either discriminatory or inadequate tests of competency and therefore subject to constitutional infirmity.²³⁴

Those who oppose bar examinations generally agree that there must be some requirements for entrance into the profession. One suggestion is that these requirements be established by the law schools:

The answer is clear. The law school that has had an intimate association with the student for at least three years is in a better position to observe his achievements and determine his competence. Most bar examiners, although their test is of three days' duration, never have any contact at all with the student save for the three or four hours on the day his paper is written.²³⁵

This so-called "diploma privilege," whereby graduates of accredited law schools in a state are automatically admitted to membership in the state bar after meeting any course and character requirements, has never received a great deal of support from the bar and therefore has not become a viable alternative to the bar examination.²³⁶

The arguments for eliminating bar examinations have had little persuasive effect on state bar associations and supreme courts. Bar examinations continue to be the predominant gate-

231. *Id.* at 911.

232. Kelso, *In the Shadow of the Bar Examiner, Can True Lawyering be Taught?*, *LEARNING AND THE LAW*, Winter 1976, at 45. See also E. GEE & D. JACKSON, *supra* note 45, at 33-34 (discussion of the influence of state bar examinations on curricular choice).

233. Kelso, *supra* note 232, at 45.

234. Bell, *Do Bar Examinations Serve a Useful Purpose?*, 57 *A.B.A.J.* 1215, 1216-18 (1971). See also *Chaney v. State Bar*, 386 F.2d 962 (9th Cir. 1967); *In re Pacheco*, 85 N.M. 600, 514 P.2d 1927 (1973).

235. Bell, *supra* note 234, at 1215.

236. At present only five states have a diploma privilege: Mississippi, Montana, South Dakota, West Virginia, and Wisconsin.

keeper to the profession.²³⁷ Dean Griswold has identified the major thrust of this gatekeeping function:

I do not exalt bar examinations, but I regard them as necessary and proper. They provide a stimulus to the law schools, a means of encouraging the schools to do the best job they can in legal education and not to slough it off in any way simply because the numbers of their students have become so large.²³⁸

In addition, bar examinations arguably provide a consumer-protection and consumer-confidence function by assuring the public that lawyers are professional products.²³⁹ Bar examinations, as already noted, may have an affirmative effect on students in this day of the elective curriculum by forcing them to take courses that will relate to the bar examination and hence to what some view as the reality of practice. And at least one law school dean believes that bar examinations perform a useful function from the law school and law faculty perspective:

It enables law schools to avoid the dreary task of training students in the laws of individual states and to become, instead, centers of learning in which law is not viewed as merely the acquisition of a body of substantive knowledge. Law Schools perform a far more exciting intellectual function, and the existence of bar examinations makes this possible.²⁴⁰

Even though the state bar examination concept holds monolithic sway, there have been recent attempts to increase the quality of bar examinations in the fifty states. The major effort has been the Multistate Bar Examination (MBE).²⁴¹ This examination, developed under the direction of the National Conference of Bar Examiners by the Educational Testing Service, was first given in February 1972 to bar applicants in nineteen jurisdictions.²⁴² In February 1977, all but seven states used the MBE; that figure alone is evidence of the success of the project.²⁴³ The MBE

237. For admissions and testing statistics for the years 1972-1975 as accumulated by the National Conference of Bar Examiners, see 45 B. EXAMINER 94-99 (1976).

238. Griswold, *In Praise of Bar Examinations*, 60 A.B.A.J. 81, 81 (1974).

239. Stanmeyer, *The Case for a Better Bar Examination*, 58 A.B.A.J. 489, 492-93 (1972).

240. Redlich, *We Train Our Students to Work for Wall Street*, LEARNING AND THE LAW, Winter 1977, at 7.

241. See Howard, *Report of Bar Examination Committee to Board of Managers of National Conference of Bar Examiners*, 45 B. EXAMINER 111 (1976).

242. Covington, *The Multistate Bar Examination*, in THE EDUCATION AND LICENSING OF LAWYERS 65, 65-66 (1976).

243. The seven nonparticipating states in February 1977 were Indiana, Iowa, Louisiana, Minnesota, Montana, New York, and West Virginia. Covington, *Multistate Bar Examination—1976-1977*, 46 B. EXAMINER 5 (1977).

is a six-hour, 200-question, multiple-choice examination covering six substantive subjects: contracts, constitutional law, criminal law, evidence, real property, and torts. The 200 questions are almost evenly divided among the six subjects.²⁴⁴ The examination is given in all participating jurisdictions twice a year on the same dates. The purpose of the examination is not to displace state bar examinations but to supplement these examinations by testing on basic subject matter of a national scope.²⁴⁵ Most jurisdictions give additional one- or two-day examinations covering subjects of local importance. The scoring of the MBE is done by the Educational Testing Service, while the additional state questions are read by local bar examiners.

In addition to its obvious convenience, the MBE has other proven benefits. Because it is constantly reviewed and refined by legal and educational experts,²⁴⁶ the quality of the examination continually improves, something that may not always be the case with state bar examinations. The standardized test permits comparisons between candidates in various jurisdictions that can, in turn, help law schools and bar examiners move toward a standard level of competence.²⁴⁷ Finally, the multiple-choice format lends itself to more objectivity than an essay examination, and with four options to each question, the test can cover more issues concerning specific subject matter than can an essay examination.²⁴⁸

Other, very experimental attempts at improving the evaluation process for lawyers are being pursued. One proposal which

244. Covington, *supra* note 242, at 65.

245. Covington, *Everything You Always Wanted to Know About the Multistate Bar Examination*, 62 A.B.A.J. 315, 315-16 (1976).

246. *Id.* at 315.

247. *Id.*

248. Covington, *supra* note 242, at 66-67. It should be noted that the MBE is not without its detractors. *E.g.*, Pock, *The Case Against the Objective Multistate Bar Examination*, 25 J. LEGAL EDUC. 66 (1973). Professor Pock notes that, even though the test is experimental, the MBE may lead to future problems:

However, if the ease of administration and economies of scale held out by the MBE prove irresistible to bar examiners, it is not difficult to foresee the day when it will become as American as apple pie and intelligence quotients. If we reach such centripetalist extreme, law schools will be rated according to how well their graduates fare on this national examination. The very availability and comparability of the scores will compel this result. Given our natural or market-inspired tropism towards what one may euphemistically and politely call "institutional self-abnegation" (witness the late sixties when many schools indiscriminately succumbed to reasonable as well as preposterous demands), law schools may well fall in line and *reinstitute a regime of slapdash black-letter legal education.*

Id. at 70 (emphasis in original).

may soon be tested is that of a national federal bar examination.²⁴⁹ This proposal is intended to "upgrade the capabilities of lawyers licensed in the federal courts" which "will contribute greatly to the speedier and more effective conduct of litigation in the federal courts and give the nation a more effective, fairer, and efficient system of justice."²⁵⁰ Such a bar examination would be administered to all who seek to practice in federal court. The test would probably cover five substantive areas: "federal civil and criminal procedure, federal jurisdiction, federal substantive criminal law, United States constitutional principles, and federal administrative law."²⁵¹ Yet another proposal would permit a law student to take a bar examination at the completion of three or four semester of law study.

Persons who passed the [proposed] bar examination would *not* be admitted to practice law until they had thereafter graduated from an approved school. However, the last third or, even better, last *half* of their legal education would be freed from the constraints imposed by concern over having to assemble substantive analytical knowledge in certain bar exam areas.²⁵²

Students would then be free to tailor a curriculum to their particular interest, and even enjoy doing so, without the constraints of "impending doom." Such a system would bear some resemblance to the English method that administers a general examination during, not after, law school training.²⁵³ Finally, there are attempts underway to develop evaluation measures that will also test for broad lawyering skills rather than solely for a demonstration of analytic knowledge as presently sought by bar examinations.²⁵⁴ This latter possibility may, in the long run, be of greatest importance to legal education because success in developing effective skills evaluations will open up greater opportunities for skills training in law schools and, in turn, will broaden the scope of bar evaluations.

2. *New directions in bar requirements*

Much to the horror of many legal educators, "[s]ome lawyers and judges have moved beyond dialogue and persuasion and

249. One of the possible proposals which could come from the Devitt committee is that of a national federal bar examination. See notes 313-18 and accompanying text *infra*.

250. Wilkey, *A Bar Examination for Federal Courts*, 61 A.B.A.J. 1091, 1091 (1975).

251. *Id.* at 1092.

252. Kelso, *supra* note 232, at 45.

253. See generally Section IV *supra*.

254. ANTIOCH SCHOOL OF LAW, note 99 *supra*; Kelso, note 209 *supra*.

seek to determine or directly influence the priorities of law school curricula through the device of rules of court stipulating specific course requirements for bar admission."²⁵⁵ To law schools that have enjoyed unfettered freedom of academic direction for some time, this movement toward course requirements smacks of coercion rather than partnership.²⁵⁶ To the proponents, such plans represent no more than an insistence on protecting the public from incompetence.²⁵⁷ Whatever position eventually holds sway, the bar and bench's new disaffection with legal education does represent a movement away from the traditional roles of the schools and the bar where the former controls educational content and the latter tests for professional proficiency.²⁵⁸ At present, there are two major proposals causing widespread discussion and debate: (1) the *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice* in the Second Circuit (mercifully called the Clare committee report);²⁵⁹ and (2) Rule 13 of the rules on admission to the bar of Indiana.²⁶⁰ Concerns that motivated the Clare committee proposals and the adoption of Rule 13 have in turn prompted the appointment of a committee, chaired by Judge Edward J. Devitt, to develop standards for admission to practice in the federal courts.

a. *Clare committee proposal.* The genesis of the Clare committee recommendations can be found in the provocative Sonett Lecture delivered by Chief Justice Burger at the Fordham Law School in November 1973.²⁶¹ In a very real sense, the Chief Justice fired the shot that started the avalanche:

[One] cause of inadequate advocacy derives from certain aspects of law school education. Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer's function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy. I have now joined those who

255. Allen, *supra* note 229, at 347.

256. Ehrlich, *A Critique of the Proposed New Admission Rule for District Courts in the Second Circuit*, 61 A.B.A.J. 1385, 1386 (1975).

257. Pincus, *supra* note 177, at 485-86.

258. Allen, *Resolving the Tension Between Professors and Practitioners*, LEARNING AND THE LAW, Winter 1976, at 50.

259. *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice*, 67 F.R.D. 159 (1975) [hereinafter cited as *Clare Committee Report*].

260. INDIANA SUPREME COURT COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, PROCEEDINGS ON RULE 13 OF THE RULES ON ADMISSION TO THE BAR OF INDIANA BY WRITTEN EXAMINATION 10-12 (1975) [hereinafter cited as *PROCEEDINGS ON RULE 13*].

261. Burger, note 166 *supra*.

propose that the basic legal education could well be accomplished in two years, after which more concrete and specialized legal education should begin. If the specialty is litigation, the training should be prescribed and supervised by professional advocates cooperating with professional teachers, for both are needed. A two-year program is feasible once we shake off the heritage of our agricultural frontier that the "young folks" should have three months vacation to help harvest the crops—a factor that continues to dominate our education. The third year in school should, for those who aspire to be advocates, concentrate on what goes on in courtrooms. This should be done under the guidance of practitioners along with professional teachers. The medical profession does not try to teach surgery simply with books; more than 80 percent of all medical teaching is done by practicing physicians and surgeons. Similarly, trial advocacy must be learned from trial advocates.²⁶²

The Chief Justice then proposed that bar, judicial, law school, and trial lawyer associations collaborate to improve trial advocacy in this country by developing a "workable and enforceable certification of trial advocates."²⁶³ Quick to respond to this call to arms, Chief Judge Kaufman of the United States Court of Appeals for the Second Circuit appointed a committee in January 1974 to develop proposals to improve the quality of representation in the federal courts in the Second Circuit.²⁶⁴ This committee was comprised of trial lawyers, judges, and academicians from within the circuit, with Robert L. Clare, Jr. as committee chairman. After eighteen months of deliberations and hearings, the Clare committee submitted proposed rules to the circuit's Judicial Conference.

As a premise for its proposals, the committee found "a lack of competency in trial advocacy in the Federal Courts . . . directly attributable to the lack of legal training."²⁶⁵ This conclusion was based upon lengthy interviews with approximately forty judges in the circuit. The committee concluded that this incompetency is also due in part to the increased burdens placed on the trial bar by heavier caseloads and commitments.²⁶⁶ The law schools, however, received the brunt of the criticism:

At the same time that there exists a need for greater competency at the trial bar, law schools are being met with student

262. *Id.* at 232.

263. *Id.* at 240-41.

264. CLARE COMMITTEE REPORT, *supra* note 259, at 161.

265. *Id.* at 164.

266. *Id.* at 167.

demands that include almost complete freedom of choice in course selection. Courses that ten years ago were considered essential for every lawyer are now elective. These developments, which are signs of the times, may produce more "mature" or "better rounded" individuals, but this does not necessarily mean that the young lawyer is grounded in basic fundamentals and qualified in technics of trying cases. Yet, the demands of society are forcing such lawyers into the trial arena.²⁶⁷

To remedy this "lack of training," the committee proposed that every applicant to practice before the federal courts in the Second Circuit be required to show successful completion of courses in five subject matter areas: evidence; civil procedure, including federal jurisdiction practice and procedure; criminal law and procedure; professional responsibility; and trial advocacy.²⁶⁸ These course requirements could be met in law school or through CLE and postgraduate programs.²⁶⁹ As another alternative to completing the required courses, a committee on admissions could determine whether the applicant has "gained equivalent knowledge of the subject matter" through some other method.²⁷⁰ In addition to the course requirements, an applicant would be required to have attended four court proceedings, at least two of which were in federal court.²⁷¹

Members of the Clare committee individually have written in support of the committee's recommendations.²⁷² The essence of this support is found in a defense of the Clare report by Dean Joseph McLaughlin of the Fordham Law School:

The overriding concern of the federal courts that advocates be acquainted with these skills is no less compelling than the interest of the patient that his surgeon, in addition to a textbook knowledge of anatomy, have previously held a scalpel in his hand and have seen an appendix *in situ* so that he will not have to probe blindly in the patient's stomach trying to find it. Similarly, I fail to see the wisdom in the argument that even those graduates who have never seen a client or been in a courtroom are qualified to appear in the litigation arena.²⁷³

267. *Id.*

268. *Id.* at 168.

269. *Id.* at 170-71.

270. *Id.* at 171-72.

271. *Id.* at 174. The applicant, of course, must also be a member in good standing of a state bar and meet requisite character requirements.

272. See, e.g., Clare, *Incompetency and the Responsibility of Courts and Law Schools*, 50 ST. JOHN'S L. REV. 463 (1976); Silverman, *Ending the Myths that Plague the Clare Proposals*, LEARNING AND THE LAW, Summer 1976, at 22.

273. McLaughlin, *Trial Incompetence: In Defense of the Clare Cure*, TRIAL, June

Those opposed to the "Clare cure" have based their opposition generally on the "sloppy" methodology used by the Clare committee and the probable adverse impact that such rules would have on the legal education system.²⁷⁴ The Clare committee's major evidence that incompetence exists in the trial bar was the interviews that committee members conducted with federal judges in the circuit. Most certainly there was a wide variation of opinion among the judges as to the proportion of lawyers providing inadequate representation in the judges' courtrooms; the percentage reported ranged from one to seventy-five percent.²⁷⁵ Furthermore, the committee made no attempt to define the terms "incompetency" or "inadequacy"—words that can mean different things to different people. Out of such informal interviews can come shaky premises.²⁷⁶ Even if there had been a strong showing that minimum levels of competency were not being met by a number of trial advocates, it is difficult to prove that requiring all admittees to take courses in trial advocacy will cure the problem. The difficulty with prescribing a general remedy for the situation has been pointed out by Michael Sovern:

[T]he notion that the study of trial advocacy is a determinant of high or low quality performance in the federal courts is not only unproven, it is also improbable. I believe that so small a proportion of the younger lawyers trying cases in the federal courts today lack the prescribed instruction that sentencing every one of them to school tomorrow could not possibly have a noticeable effect on the quality of trial advocacy. And it is, of course, only new lawyers that the Clare Committee proposal affects. When the Clare Committee actually examines the evidence, it does not claim that lack of training in trial practice is responsible in the slightest degree for observed deficiencies in federal courtrooms. On the contrary, the report confesses: "It is true that the Committee has no evidence that the direct cause of the criticism is lack of knowledge of the subject matters referred to" Like the doctors who prescribe antibiotics for the common cold, the Committee nonetheless proceeded to pre-

1976, at 72.

274. See generally SPECIAL COMMITTEE ON ADMISSION TO THE BAR, ASSOCIATION OF AMERICAN LAW SCHOOLS, REPORT ON THE CLARE COMMITTEE PROPOSAL FOR RULES OF ADMISSION TO THE FEDERAL DISTRICT COURTS IN THE SECOND CIRCUIT (undated).

275. *Clare Committee Report*, *supra* note 259, at 164-66.

276. Of course, the reader will quickly realize that many of these criticisms made against the Clare committee report can also apply to this study. Any scholar faces difficulty when trying to bring precision to such imprecise concepts.

scribe trial practice to cure an ailment not caused by a lack of trial practice.²⁷⁷

Indeed, if there is incompetence in the trial bar (many of whose members have taken the "magic" courses), then it may be argued tongue in cheek that such courses should *not* be taught. Responding to all this criticism of its methodology, one member of the Clare committee admitted the narrowness of the sample but asserted that, given the modesty of the proposals, "a more searching and expensive inquiry would [not] have been worth the effort."²⁷⁸

It is the impact of these proposed rules on legal education, however, not the committee's methodology, that has caused the major concern. Because of the "national" nature of the Second Circuit, most law schools will feel pressure, it is argued, to conform their curricula to the circuit's rules.²⁷⁹ Another danger is that other federal circuits and state courts will create curricular requirements somewhat different from those of the Second Circuit.²⁸⁰ This balkanization will leave the school and the student in the dilemma of deciding which requirements to follow. Thus, a law student at Stanford who is uncertain whether to practice in New York, Chicago, or San Francisco might have to take a variety of courses to meet the admission requirements of district courts within the Second, Seventh, and Ninth Circuits. Equally onerous is the fact that the Stanford student will expect the law school to teach those required courses and their variations as reflected in court rules. A student may well feel compelled to take a variety of these required courses to the exclusion of other courses of equal worth such as federal taxation, commercial law, and labor law.²⁸¹

Another result might be that the growing number of so-called "national" law schools will be forced to return to a more regional curriculum by narrowing their scope of offerings in order to meet

277. Sovern, *A Better Prepared Bar—The Wrong Approach*, 50 ST. JOHN'S L. REV. 473, 475 (1976) (footnote omitted).

278. McLaughlin, *supra* note 273, at 63.

279. Ehrlich, *supra* note 256, at 1385-86.

280. The probability of conflict is not remote. A number of federal circuit judicial conferences have been considering the possibility of imposing standards, and at least one state, Indiana, has already done so. PROCEEDINGS ON RULE 13, note 260 *supra*.

281. Throughout this study we have contended that student choice in course selection closely follows bar requirements. See E. GEE & D. JACKSON, *supra* note 45, at 33-39. Apparently those opposed to the Clare report agree with that proposition. See Ehrlich, *supra* note 256, at 1386; Pedrick & Frank, *We Are Faced with a Clare and Present Danger, LEARNING AND THE LAW*, Winter 1976, at 49.

the requirements of the courts in their area, which could then discourage students from attending schools outside of the geographic area where they intend to practice. Certainly one of the strengths of American legal education has been a broad mixture of students and faculty from different geographical areas and backgrounds in many of its law schools. Balkanization could spell the destruction of pluralism and diversity. Even the Clare committee recognized the validity of this argument and urged that national standards be considered.²⁸² Yet, as expressed by one of the committee members, there was also a belief that the degree of intrusion on students' and schools' freedom of choice has been overstated: "I do not consider that the law school deans have been endowed with omniscience and surely our [the Clare committee's] input could be considered as valid as the input of others who have an interest in academic preparation for the practice of law."²⁸³ Inherent in imposed requirements is, however, the apparent notion that legal education is too important to be left to legal educators.

An additional concern is that the cost of the proposed rules would be high to law schools and law students. It is generally conceded that the financial burden of effective trial advocacy programs, whether clinical or simulated, is high when compared with other courses in the legal curriculum.²⁸⁴ Such programs require close supervision and low student-faculty ratios.²⁸⁵ Pedrick and Frank have even argued that requiring trial advocacy training at this time may actually have an adverse impact on the long-range health of such programs:

To force masses of students into these programs will inescapably cheapen the currency. It will blight the experimental work being undertaken. It turns the clock backward by forcing the conversion of these programs into mass activities. A good trial advocacy program can be a success only for really small numbers of highly motivated students with highly experienced faculty. Legal education is underfinanced for its present programs. If trial practice skills instruction is to be mandated for every law student, additional funding will have to come—from what source? But, to commit additional finances to mount a mass program of such uncertain promise is foolish.²⁸⁶

282. *Clare Committee Report*, *supra* note 259, at 179-80.

283. Silverman, *supra* note 272, at 25.

284. Ehrlich, *supra* note 256, at 1386; Swords, *Including Clinical Legal Education in the Law School Budget*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 309, 346-52 (1973).

285. Pedrick & Frank, *supra* note 281, at 67.

286. *Id.* at 67-68.

The psychological costs may also be high. It has only been with great effort, and at great cost, that a variety of creative approaches to the training of lawyers have found their way into the law school. To redirect these energies toward a narrower focus at a moment of promise may discourage further innovative activities by legal educators for some time to come. In addition, not only will law students stand to lose if participation in a variety of new programs is precluded, but a shift in curricular direction may only serve to solidify vocational tendencies to the exclusion of perspective courses.²⁸⁷ Again, the Clare committee was not unaware of the possible costs of their proposed rules to law schools, nor of the effect that such rules may have on other law school programs. The committee, however, viewed the issue as one of determining priorities:

While the law schools complain of the costs entailed in teaching Trial Advocacy, at the same time they apparently have no difficulty in funding courses in such subjects as "Urban Development", "Macro-economics and the Law", and "Psychoanalysis and the Law" (defined as a "study of the theory of psychoanalysis and its relevance (if any) to the law"). We do not argue that these courses lack value, but we do consider that if the courts and the public are to be adequately served, and if students are demanding training in the technique of litigation and not getting it, then the priorities demand that the necessary resources be diverted to and more emphasis be placed on trial advocacy rather than on more esoteric subjects.²⁸⁸

Unlike most naysayers, those who oppose the Clare concept are ready with alternative suggestions: (1) "Admission to the federal district courts could be conditioned on successful participation in a stated number of proceedings with a stated period of time (such as one year) in association with a lawyer admitted to practice before that court."²⁸⁹ (2) Persons could be conditionally admitted to practice in federal court with final admission dependent upon judicial evaluation.²⁹⁰ (3) A separate federal bar examination could be created, passage of which would be necessary for admission.²⁹¹ (4) Questions on federal practice, to be given in conjunction with state bar examinations, could be devised.²⁹² (5)

287. Cf. Allen, *supra* note 229, at 349 (exposure to practical problems can contribute interest and realism to the study of law).

288. Clare Committee Report, *supra* note 259, at 169-70.

289. SPECIAL COMMITTEE ON ADMISSION TO THE BAR, *supra* note 274, at 12.

290. *Id.* at 13.

291. *Id.* at 14-15.

292. Sovern, *supra* note 277, at 477.

Periodic recertification schemes for lawyers could be developed.²⁹³ These suggestions remain viable alternatives to the Clare proposals, and many are under consideration by various deliberative bodies. Yet it cannot be said that any of these proposals present fewer problems to some segment of the legal community than do the Clare proposals to law schools. In the end, it may be wise to weigh the alternatives in light of an "adverse impact statement" with the program of greatest effectiveness and least adverse impact being adopted.²⁹⁴

b. Rule 13 of Indiana. Rule 13 on admission to the Indiana bar as adopted by the Indiana Supreme Court in December 1973 is, if possible, even more controversial than the Clare proposals. The controversy centers on the rule's requirement that applicants to the Indiana bar must have "successfully completed" fifty-four "credit-semester hours" of designated subject matter while in law school in order to be eligible to take the bar examination.²⁹⁵ Once

293. *Id.* at 478.

294. It should be noted that the Clare proposal, although adopted by the Judicial Conference of the Second Circuit, has received less than unanimous endorsement from the federal district judges in the circuit. The largest district in the circuit, the Southern District of New York, voted not to adopt the proposals. *See also* Weinstein, *Proper and Improper Interactions Between Bench and Law School: Law Student Practice, Law Student Clerkships, and Rules for Admission to the Federal Bar*, 50 ST. JOHN'S L. REV. 441 (1976).

295. Rule 13(3) reads as follows:

One who has as a part of his or her work for graduation successfully completed each of the following designated subject-matter and semester-credit hour requirements, regardless of the course name in law school curricula[, shall be allowed to take the bar examination:]

CONFLICT OF LAWS	2 credit-semester hours
CONSTITUTIONAL AND ADMINISTRATIVE LAW	6 credit-semester hours
CONTRACTS AND EQUITY	6 credit-semester hours
CRIMINAL LAW AND PROCEDURE	4 credit-semester hours
EVIDENCE	4 credit-semester hours
FEDERAL TAXATION	4 credit-semester hours
LEGAL BIBLIOGRAPHY	2 credit-semester hours
LEGAL ETHICS	2 credit-semester hours
NEGOTIABLE INSTRUMENTS, SALES AND SECURED TRANSACTIONS	4 credit-semester hours
PARTNERSHIP, AGENCY AND CORPORATIONS	4 credit-semester hours
PLEADING AND PRACTICE (Rules of Procedure)	4 credit-semester hours
REAL AND PERSONAL PROPERTY	4 credit-semester hours
TORTS	4 credit-semester hours
WILLS, TRUSTS AND FUTURE INTERESTS	4 credit-semester hours

the fifty-four hour requirement has been met, a law student may take the Indiana bar examination after the completion of the second year of law school although the candidate will only be admitted to practice after successfully graduating from law school.²⁹⁶

Rule 13 was promulgated in response to concerns raised by the Indiana Board of Law Examiners after a larger than usual number of bar candidates failed to qualify for admission after sitting for the 1971-1972 examinations.²⁹⁷ The President of the Board of Law Examiners interviewed between 150 and 200 candidates who had failed the bar examination and also reviewed their examination papers.²⁹⁸ As a result of this investigation, the following conclusions were developed:

- (a) a substantial number of the persons who wrote the Indiana Bar Examination and who had failed that examination had not taken courses and subjects for which they were being tested; and
 - (b) law schools were not advising their students on the necessity of taking courses in subjects for which they might be examined.
- Additional conclusions were: (1) some persons who failed the Indiana Bar Examination for those reasons had developed [with some of their parents] considerable resentment toward the law schools from which they graduated, the Indiana State Board of Law Examiners and the Supreme Court; (2) some persons were not aware of the bar examination, and did not understand its relation to the admission to practice law in Indiana; and (3) some persons who wrote the Indiana Bar Examination were not given in law school an understanding or appreciation of the significance of the course work in which they had enrolled, or were not told about the significance of one or more courses, in relation to other courses.²⁹⁹

With these conclusions as primary support, the rule was proposed and adopted. Due to the controversy surrounding its adoption and the obvious need for further clarification, the Indiana Supreme Court Committee on Rules of Practice and Procedure was asked "to inquire about problems, which seemed to have developed in legal education or formal legal didactic programs, as they related to Rule 13."³⁰⁰ The Committee held hearings and reviewed

296. *Id.* at 81.

297. Boshkoff, *Indiana's Rule 13: The Killy-Loo Bird of the Legal World*, *LEARNING AND THE LAW*, Summer 1976, at 20.

298. *PROCEEDINGS ON RULE 13*, *supra* note 260, at 5.

299. *Id.* at 5-6.

300. *Id.* at ix.

a substantial amount of evidence and, except for minor modification, recommended the retention of the rule.³⁰¹

Chief Justice Givan of the Indiana Supreme Court has summarized the rationale for adoption of Rule 13 as follows:

We based our concern on the fact that the Supreme Court of Indiana has the only authority in that state to grant a license to practice law. Therefore, when the court exercises that authority, it is a representation to the people of Indiana, and all other jurisdictions where the license may be presented, that that person is competent, in a minimal sense, to engage in the practice of law.

By certifying attorneys to practice law, we represent that they are competent to provide effective counsel—on which we insist and to which a client is constitutionally entitled. That representation is not made by any American law school or any law school in Indiana, and it is not made by any bar association, whether by a state bar or by the American Bar Association, unless a state has an integrated bar association.³⁰²

This summary, of course, does not fully answer the question of why requiring specific subject matter and specific hours in that subject matter to be taken will remedy incompetency. Yet, the major support for the fifty-four hour rule appears to be based upon two premises: First, the required subject matter has a direct relationship to lawyer competency; and second, requiring said subject matter is necessary because students and law schools have a tendency to substitute “social awareness” courses for those that teach lawyering skills.³⁰³ In actuality, the rule seems to have had Disgruntlement for its mother and is now seeking Reason for a father.³⁰⁴

The problems presented by Rule 13 for law schools and law students are very similar to those raised by the Clare proposals.³⁰⁵ In essence, according to three Indiana educators,

[s]tudents may be forced to make unreasonably early decisions about where they wish to practice law. Indiana firms may find

301. *Id.* at 9.

302. Givan, *Indiana Rule 13: It Doesn't Invite Conformity. It Compels Competency*, *LEARNING AND THE LAW*, Summer 1976, at 21.

303. Interview with Chief Justice Richard Givan, Indiana Supreme Court, in Indianapolis (Feb. 5, 1976).

304. This observation is based upon interviews with parties to the deliberations surrounding Rule 13 and the transcript of the hearings held on Rule 13. See *PROCEEDINGS ON RULE 13*, *supra* note 260, at 16-76.

305. Because of the similarity of expressed concerns about the Clare report and Rule 13, the reader should refer to the discussion of the Clare proposals for detailed exploration of these concerns. Notes 261-94 and accompanying text *supra*.

that hiring non-Hoosiers has suddenly become much more difficult. If other states adopt slightly different versions of Rule 13 the balkanization of the practice of law will be upon us. Constructive change in legal education will be inhibited. We join the many others who are concerned that Rule 13, contrary to the intent of its sponsors, may have a damaging impact upon legal education and the practice of law.³⁰⁶

Perhaps the most persuasive argument mustered by the opponents to the rule is based upon an analysis of performance on bar examinations given in Indiana between July 1973 and July 1974 to 272 graduates of Indiana University Law School.³⁰⁷ The students were divided into two groups, the first having taken the July 1973 examination and the second having taken the February or July 1974 examinations. The study proceeded on the premise that, "if passing the bar is actually dependent on taking the courses required by Rule 13, students who has taken these courses should, net of other characteristics also related to passing the examination, have been more likely to succeed than those not taking such courses."³⁰⁸ The results of the analysis showed that there was no consistent positive relationship between bar passage and bar-related courses.³⁰⁹ Of course, the sample was limited and the period of time covered was short, both of which might raise methodological concerns; yet the lack of correlation could suggest that Rule 13 needs further careful analysis and consideration if indeed its basis for adoption is a belief that the required subject matter correlates positively with bar performance.

Perhaps the most disturbing aspect of the Rule 13 debate is the open animosity existing between the two camps. Proponents claim that opponents deliberately misread the rule so as to undermine its effectiveness. They also intimate that vendettas have been launched against supporters of the rule by ABA and AALS officials.³¹⁰ On the other side, there is no hint of understanding or compromise between the lines of strongly worded rhetoric.³¹¹ If Indiana represents a microcosm of the larger legal community, we must be concerned that the admirable quests for competency

306. Cutright, Cutright, & Boshkoff, *Course Selection, Student Characteristics and Bar Examination Performance: The Indiana University Law School Experience*, 27 J. LEGAL EDUC. 127, 136 (1975).

307. *Id.* at 129.

308. *Id.*

309. *Id.* at 136-37.

310. Givan, *supra* note 302, at 21.

311. See, e.g., Boshkoff, *supra* note 297, at 18.

presently being undertaken by the bar and law schools may not be given fair hearing, but instead may fall victim to intramural jousts.³¹²

c. *The Devitt committee.* The fears expressed in both the Clare committee and Rule 13 debates concerning "balkanization" have not gone unheard by the federal judiciary. By resolution of the Judicial Conference of the United States on September 26, 1975, the Chief Justice of the United States was asked to appoint a special committee to study suggested rules for admission to practice in the federal district courts.³¹³ The Committee to Propose Standards for Admission to Practice in the Federal Courts was appointed by the Chief Justice in September 1976.³¹⁴ The committee has twenty-four members—twelve federal judges, six practicing lawyers, and six representatives from the law school community.³¹⁵ Chief Judge Edward J. Devitt of the Federal District of Minnesota serves as chairman (and has unwillingly give his name to the committee, remembering full well what happened to Robert Clare.)

The committee is seeking to answer two questions: First, to what extent is improvement in the performance of advocates in the federal courts needed? Second, how can this need best be met?³¹⁶ To answer these questions, the committee has launched a carefully programmed agenda of research and public hearings with the cooperation of the Administrative Office of the U.S. Courts and the Federal Judicial Center. The research goals are:

1. To determine systematically whether, in the judgment of judges and lawyers, there is a substantial problem of inadequate performances among advocates in the federal courts.

312. In the face of considerable criticism at the ABA Midyear meeting in New Orleans, including a resolution proposed by the Illinois State Bar calling for repudiation of a statement by Chief Justice Burger, the Chief Justice reaffirmed his assessment that about one-half of the bar is incompetent in courtroom procedure. N.Y. Times, Feb. 13, 1978, § A, at 17, col. 1. The resolution was eventually defeated after opponents argued that a condemnation would bring further disrespect upon the profession. *Id.* Feb. 14, 1978, § A, at 1, col. 2.

313. REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 78 (1975).

314. Devitt, *Improving Federal Trial Advocacy*, 60 JUDICATURE 490, 493 (1977).

315. *Id.* at 490 n.1. The following are members of the Devitt committee: Robert L. Clare, Jr., Thomas E. Deacy, Jr., Hon. Sherman G. Finesilver, E. Gordon Gee, Henry Halladay, Hon. A. Leon Higginbotham, R. William Ide, III, Joseph R. Julin, Robert E. Keeton, Hon. Morris E. Lasker, Joseph McLaughlin, Robert W. Meserve, Hon. James R. Miller, Dorothy W. Nelson, Hon. Charles B. Renfrew, E. Donald Shapiro, Hon. Adrian A. Spears, Hon. Malcom R. Wilkey, Hon. Hubert L. Will, Hon. Edward J. Devitt, John E. Kennedy, Carl H. Imlay, Elsie L. Reid, Steven Charen, and Andrew J. Goodman.

316. *Id.* at 491.

2. To determine whether, in the judgment of judges and lawyers, there is a substantial problem of inadequate performance among certain segments of this group of advocates.
3. To gather opinions about the particular components of advocacy in which practitioners most need improvement.³¹⁷

Once the research agenda is completed and other phases of public hearings and debates are concluded, the committee will formulate tentative recommendations. Another series of hearings will be held on these proposals before they are finally adopted and submitted to the Judicial Conference.³¹⁸ The committee hopes to complete its assignment by September 1978. Undoubtedly, this committee's work has the potential of great impact on legal education because it represents the first national effort on the part of the judiciary to address the question of whether or not inadequacies in the bar exist and to establish what should be done if problems are identified.

E. Legal Education and Continuing Lawyer Competency

*A Lawyer Should Represent a Client Competently*³¹⁹

Does the law school's responsibility end at the schoolhouse gate? Without question legal education is an integral part of the larger legal community. The very nature of a profession demands a symbiotic relationship between the training and practice functions of the profession. Perhaps this is especially true within the legal profession because of the ever-accelerating complexities of our social system toward which lawyers carry a heavy responsibility. Indeed, the answer to the posed question may be that the law school's responsibility *starts* at the schoolhouse gate. With this evolving relationship between law schools and the bar, any decisions made by the bar to improve upon the professional performance of its members will have an impact on legal education; that impact can be either direct through attempts to require law schools to teach certain subjects or students to take certain courses (as with the Clare and Rule 13 proposals)³²⁰ or indirect through creation of periodic recertification or other similar schemes for lawyers. It is to this latter development that we now turn.

In response to mounting criticism, a number of proposals

317. *Id.* at 494.

318. *Id.* at 495.

319. ABA CODE OF PROFESSIONAL RESPONSIBILITY CANON NO. 6.

320. Notes 261-312 and accompanying text *supra*.

have been made as to how professional fitness can best be monitored and improved. The most notable of these proposals can be classified as follows: (1) voluntary CLE; (2) mandatory CLE; (3) peer review; (4) voluntary self-assessment testing; (5) mandatory examinations for recertification; (6) selective monitoring of competence; and (7) certification of specialists. After a brief description of each of these proposals, the two proposals that show the greatest promise or widespread acceptance—mandatory CLE and the certification of specialists—will be discussed in greater detail.

As the name implies, voluntary CLE encourages lawyers to keep abreast of new developments on a *voluntary* basis. Voluntary CLE generally involves a local, state, or national bar association or a private organization (such as the Practicing Law Institute) that organizes topical programs open to all interested attorneys. Because there is no compulsion to attend, the quality of these programs tends to be quite good in order for the courses to survive in the market place.

Voluntary CLE also includes any self-education that a lawyer may undertake, whether through an individual reading and research program or use of a variety of audio and video cassette tapes now available on the commercial market or from professional associations. A growing number of attorneys are also participating in ongoing small-group CLE programs within their offices or in conjunction with other interested lawyers. The theory supporting these voluntary CLE activities is that “[t]he attorney who seeks to better himself of his own volition derives maximum benefits from his educational experiences.”³²¹

Mandatory CLE plans require an attorney to take a prescribed number of hours of continuing legal education courses or to participate in equivalent educational experiences over a period of time (usually one to three years) in order to be eligible to continue practicing law. These requirements must be met periodically as determined by the particular rule.

A peer review plan would require members of the legal profession “to evaluate the competence and performance of their brethren.”³²² Based upon these evaluations, certain disciplinary or even stronger actions could be taken by a bar association against any lawyer receiving continually poor ratings. At the moment no peer review systems for lawyers exist in the United

321. Wolkin, *On Improving the Quality of Lawyering*, 50 ST. JOHN'S L. REV. 523, 531 (1976).

322. Wolkin, *More on a Better Way to Keep Lawyers Competent*, 61 A.B.A.J. 1064, 1065 (1975).

States, apparently a result of "the belief that there is no workable way to administer peer review in the legal profession nor to report the results of peer review to the state licensing authority."³²³ Peer review systems have proven quite useful in other professions such as medicine and accountancy.³²⁴

A self-assessment testing program would allow a lawyer to take an examination, usually of the multiple-choice type, at his leisure on a specialty or specialties of his choice. The examination would be graded either by the individual test-taker or sent to a central grading service. The purpose of such self-assessment examinations would be to inform the lawyer where he is weak and needs improvement without undue public embarrassment. Even the examination itself could be a learning experience because "[s]tudents tend to remember their mistakes and learn from them long after they have forgotten their easy triumphs."³²⁵

The suggestion that attorneys be subjected to periodic mandatory examinations for recertification is probably the most stringent proposal for maintaining professional competency. This proposal has been greeted with near universal scorn among lawyers.³²⁶ As stated by one law school wag:

We should certainly be loath to embrace any system of examinations as the basis for certification. Anyone who has administered law school examinations for twenty years or more and shuddered on occasion at particular bar examination results should look with horror on any expansion in the role of examinations in the life of the legal profession.³²⁷

A selective monitoring program would allow lawyers, clients, judges, and others involved in the legal process to call incompetent or unprofessional acts of others to the attention of an established bar commission; the commission could then "investigate, hold a hearing, and if the allegations of lack of competence were found to have substance, prescribe a remedial education program."³²⁸ The commission could curtail or suspend the right to practice law until the program was successfully completed. The strength of such a program would be that it institutionalizes the

323. Parker, *Periodic Recertification of Lawyers: A Comparative Study of Programs for Maintaining Professional Competence*, 1974 UTAH L. REV. 463, 466.

324. *Id.* at 467-73.

325. Berger & Barnett, *Rx. for Continuing Education: Lawyer Examine Thyself!* 59 A.B.A.J. 877, 878 (1973).

326. Parker, *supra* note 323, at 476.

327. Pedrick, *Collapsible Specialists*, 55 A.B.A.J. 324, 327 (1969).

328. Wolkin, *supra* note 322, at 1064.

profession's self-policing function and, if properly applied, could successfully inhibit professional incompetence.³²⁹

Although specialty certification can take a variety of forms, the purpose of such proposals is to improve the quality of legal services by allowing certain lawyers to hold themselves out as specialists in selected practice areas. The rationale for specialization is that lawyers will upgrade themselves to meet the specialty requirements and the consumer of legal services will therefore be in a much better position "to find the particular lawyer able to provide the particular service that the immediate problem requires at a reasonably competitive cost."³³⁰

All of these proposals have strengths, yet some have received greater attention and support than others. The two proposals which, at the moment, appear to merit further discussion because of their acceptance by the bar and concomitant import to legal education are mandatory CLE and the certification of specialists.

1. *Mandatory continuing legal education*

Mandatory CLE, a method of continuing education that is finding increasing use in other professions and occupations,³³¹ appears to be a concept whose time has also arrived in the legal profession. Over the past two years, since its adoption by the Supreme Court of Minnesota in April 1975,³³² three other states have instituted some form of mandatory CLE for lawyers, and a

329. Wolkin, *supra* note 321, at 541.

330. Smith, *Random Thoughts About Recertification, Specialization, and Continuing Legal Education*, 29 OKLA. L. REV. 629, 633 (1976).

331. Various states now require some form of continuing education for a number of professions and occupations:

Much of the current legislation governs the health-care fields. Seventeen states require continuing education for physicians. An additional 11 states have approved but not yet implemented similar requirements.

Eight states have mandatory requirements for dentists and another 27 are considering it. Nine states have requirements for nurses, although the programs in three states are not yet operating. Fourteen states require continuing education for pharmacists, 38 for nursing-home administrators, 45 for optometrists, and 18 for veterinarians.

Eleven states require further education for a person to be relicensed as a realtor, while an additional 26 are considering it. Six of the 19 states that regulate social work have mandated continuing education for social workers. Twenty-three states have passed legislation governing certified public accountants.

Watkins, *Certification of Professionals: A Bonanza for Extension Programs*, CHRONICLE HIGHER EDUC., Apr. 11, 1977, at 8, col. 1. See also Section V, notes 96-99, 138-39 and accompanying text *supra* (use of mandatory CLE in accountancy and medicine).

332. *In re: Rules Relating to Continuing Professional Educ.*, 300 Minn. xxxvii (1975).

host of other states have established feasibility study committees.³³³ Although the formats for mandatory CLE may vary, they all have the same purpose: to maintain and improve the quality of the bar and delivery of legal services by requiring members to participate in a minimum number of educational experiences as a condition of their continued right to practice law. Mandatory CLE has undoubtedly received assistance from the current criticisms of the legal profession. But the growing interest in CLE in general has also been spurred by the increasing complexity of the law. As the medical profession has already discovered,³³⁴ post-graduate professional education may be necessary to meet the demands made by increased complexity in a profession's field of knowledge. As one observer of legal education has remarked,

[w]ith whole new fields of law emerging almost annually and specialization becoming increasingly common, even necessary, it is abundantly clear that the law schools cannot be expected to bear the full burden of legal education. The possession of a J.D. degree and admission to the bar can no longer be accepted as marks that a lawyer has completed his or her formal education.³³⁵

The Minnesota plan for mandatory CLE was not only the first such plan, but has also been a prototype for others. It is a deceptively simple program: an attorney in Minnesota is now required to complete forty-five hours of "approved legal study" every three years.³³⁶ The program is administered by a State Board of Continuing Legal Education that has the power to adopt rules to carry out the order of the Minnesota Supreme Court.³³⁷ The administrative problems with this plan have been surprisingly few.³³⁸ The major problems have centered on the approval of courses given within and without the state (credit is only given for the completion of board-approved courses), the grant of par-

333. Watkins, *supra* note 331 at 8, col. 1: "Four states [Iowa, Minnesota, Washington, and Wisconsin] have mandatory continuing education for lawyers, and an additional three have requirements for legal specializations. Legislative action is pending in nine states and under study in another 11."

334. See Section V, notes 136, 138-39 and accompanying text *supra*.

335. AMERICAN BAR ASSOCIATION, *QUALITY LEGAL SERVICES AND CONTINUING LEGAL EDUCATION* 66 (1976) (National Conference on CLE, 1975) (remarks of Justin A. Stanley).

336. MINN. S. CT. R. CONTIN. LEGAL EDUC. 3, 300 Minn. xxxix (1975).

337. *Id.* 2, 7, 300 Minn. at xxxviii, xxxx.

338. See Byron, *Mandatory Continuing Legal Education in Minnesota: The First Year*, 50 ST. JOHN'S L. REV. 512 (1976); Sheran & Harmon, *Minnesota Plan: Mandatory Continuing Legal Education for Lawyers and Judges as a Condition for the Maintaining of Professional Licensing*, 44 FORDHAM L. REV. 1081 (1976).

tial credit for certain courses, and the definition of "hour" for purposes of the rule.³³⁹ In addition, the need for several modifications of the plan have become apparent, the most pressing being the need for a limited carryover of excess credits for each triennium, a situation that can arise because of the length of the reporting period.³⁴⁰ The Iowa, Washington, and Wisconsin plans have addressed this problem by requiring members of the respective bars to take a minimum of fifteen credit hours *each* year. The likelihood of excess credit accruing is much less with a yearly reporting period, yet these plans allow for a limited number of carryover credits.³⁴¹

Even though the mandatory CLE programs presently in operation appear to be functioning with a minimum of administrative problems for pioneering efforts, they are too new to help shed light on the larger question of whether mandatory CLE is a viable solution to many of the problems facing the profession. As if to underscore the difficulty of this question, the *Final Statement* of the fourth National Conference on Continuing Legal Education concluded:

Participants discussed the innovative programs now adopted in Iowa and Minnesota that undertake to enhance the performance of lawyers and judges by requiring regular participation in a prescribed number of hours of continuing legal education. A majority of the conference participants are of the view that the case for mandatory programs is not sufficiently persuasive to support a recommendation that all states now adopt them. We believe that there are unanswered questions concerning the specific relationship between required programs of continuing legal education and the quality of legal service.³⁴²

There are several substantial reasons for concern about the effectiveness of mandatory CLE programs. First, mandatory plans may not correct the "evils" affecting the legal profession which trouble the public. As explained in a report submitted to the Michigan State Bar by its Committee on Continuing Legal Education:

339. Byron, *supra* note 338, at 516-17.

340. *Id.* at 518-19.

341. For a convenient reference to the various plans, except Washington's, see AMERICAN BAR ASSOCIATION, *supra* note 335, at 152-72. For a review of the Washington Plan, see Michalik, *Mandatory CLE Comes to Washington*, ALI-ABA CLE Rev. Apr. 8, 1977, at 1, col. 1.

342. AMERICAN BAR ASSOCIATION, *supra* note 335, at 123.

It is the opinion of the Committee that the type of "competence" with which the Bar or general public is more properly concerned is that involving acts of moral turpitude, breach of ethics, or less than diligent work habits. There presently exist the grievance procedures through which a client can process his complaint concerning the adequacy of legal services rendered to him. No method or manner of mandatory legal education courses, in your Committee's opinion, will correct the foregoing problems.³⁴³

Another criticism is that there is "a lack of substantiating evidence that there actually is an extensive problem which requires a remedial program of some kind, and the exact nature of such problem, if any."³⁴⁴ This, of course, is the criticism that has been continually raised against any proposals affecting lawyers and legal education which maintain as a basic premise that there is a lack of competency on the part of certain members of the bar. Until sufficient empirical data is available from which the competence of the bar can be measured, there will continue to be subjective evaluations of competency with differing conclusions.

The third problem is that mandatory CLE may not improve the professional competence of those most in need. Erwin Griswold suggests that "[t]he lawyers who need the courses may attend in a perfunctory way, going through the motions but subject to no requirements, while the lawyers who are constantly training themselves will largely waste their time."³⁴⁵ Such will probably be the case with those who do not want to gain benefits from a CLE program *unless* a testing requirement or some other evaluation technique is instituted that will have a coercive element beyond just a timeserving obligation. Even if a testing requirement were instituted, however, it does not follow that an attorney's passage of an examination on a course or subject area will have any relationship to the actual practice of law and "competence."³⁴⁶

Finally, mandatory CLE has been criticized as being "unfocused." There exists a variety of specialties, experience, and needs within the profession, yet the present mandatory CLE

343. *Michigan State Bar Rejects Mandatory Continuing Legal Education*, ALI-ABA CLE Rev. Apr. 1, 1977, at 7, col. 1.

344. Dornstein, *A Critique of Compulsory CLE* (pt. 1), ALI-ABA CLE Rev., Oct. 17, 1975, at 1, col. 2.

345. Griswold, *The Legal Profession in the United States: A Contemporary Appraisal*, in *LEGAL INSTITUTIONS TODAY: ENGLISH AND AMERICAN APPROACHES COMPARED* 125, 135 (H. Jones ed. 1976).

346. Dornstein, *supra* note 344, at 4, col. 2.

plans only speak to minimum hours of attendance and not to the types of courses in which an individual should enroll. This questionable practice has been characterized by one critical observer:

To a profession concerned with ensuring and maintaining its member's professional health, mandatory CLE is equivalent to imposing on each lawyer a prescription for three meals a day for a whole career. Such a regimen ignores the peculiar needs of individual lawyers, some of whom already follow it, and many of whom might need something equivalent to four meals a day, a special diet or even intensive care. Just as one might question the competence of a physician who prescribed such a generalized approach to maintaining physical health, one may wonder about the seriousness of a profession that seeks to maintain its competence by applying the same general minimum-hour requirement to all its members.³⁴⁷

The response to the variety of adverse comments which mandatory CLE has received from its critics has been simple: the program is better than what is presently being done in most jurisdictions, which is nothing. Failure by the legal profession to react in some positive way to consumer concerns will only act as a catalyst to bring the wrath of the legislature down on the profession's collective head.³⁴⁸ It has also been pointed out that voluntary CLE presently reaches only a small portion of bar membership. Furthermore, while the other proposed nostrums (peer review, mandatory examinations, and others) have neither been market tested nor received much enthusiastic support from any segment of the bar, mandatory CLE has been tried and well received.³⁴⁹ Some of the criticisms of mandatory CLE, such as that which is directed to the lack of evaluation of participants, "are not arguments against the idea of mandatory education as such, but are, instead, arguments that its principles should be extended farther than has so far been considered advisable. . . . [T]here is nothing in the concept of mandatory education which will prevent use of these additives."³⁵⁰ Nor is there any proof that requiring lawyers to attend CLE courses will destroy the motivation of those who have voluntarily undertaken programs of self-improvement. A CLE program will only officially recognize "the

347. AMERICAN BAR ASSOCIATION, *supra* note 335, at 7-8 (paper presented by Charles C. Bingaman).

348. Wolkin, *A Better Way to Keep Lawyers Competent*, 61 A.B.A.J. 574, 574 (1975).

349. Byron, *supra* note 338, at 514-15.

350. Sheran & Harmon, *supra* note 338, at 1093.

importance of what they have been doing all along."³⁵¹ It is apparent from these arguments that even its strongest supporters do not believe that mandatory CLE is a cure-all for professional ills. In fact, it may only be a Band-Aid where the resources of the Red Cross are required; it does, however, represent a halting step by a profession in need toward concern about competency.

2. *Certification of specialists*

As Packer and Ehrlich note, specialization has long been a reality at the bar:

[S]pecialization is already a fact in the legal profession: many, if not most, lawyers concentrate their practice in particular areas. Specialization may be by client (whether the government, or an individual corporation, or a particular industry such as drugs or automobiles), by locale (all the types of people in a confined area, such as a town or a neighborhood), by fields of legal doctrine (labor law, patents, probate, etc.), by tasks (negotiation, lobbying, litigation, etc.), or by institutional setting (the Federal Trade Commission, a particular court, legislature, etc.) among others. Such specialization is already part and parcel of the legal profession and is a fact.³⁵²

The question, then, is not whether specialization exists but whether it should be formally recognized. The ABA, through its Special Committee on Specialization, has wrestled for some time with the question of whether an official imprimatur should be given to legal specialties. Without finally resolving the issue,³⁵³ the committee has promulgated the following guidelines to those associations desiring to develop specialization programs:

1. Participation . . . should be on a completely voluntary basis.
2. A certified specialist should not retain the referred client upon completion of the referred matter. He should not again represent the client without the consent of the client's lawyers.
3. Certified legal specialists should be permitted to give appropriate and dignified notice that they are certified legal specialists, designating the particular fields of law in which they are so certified.

351. *Id.* at 1093-94.

352. H. PACKER & T. EHRLICH, *supra* note 53, at 10-11.

353. The committee takes "the position that it neither approves nor objects to the concept of formal recognition of lawyer specialists." AMERICAN BAR ASSOCIATION, SUMMARY OF ACTION AND REPORTS TO THE HOUSE OF DELEGATES No. 238, at 2 (1974) (Recommendation and Report of the Special Committee on Specialization)(replacing A.B.A. REP.).

4. Any lawyer, alone or in association with any other lawyer, should have the right to practice in any field of the law, even though he is not certified therein; any lawyer, alone or in association with any other lawyer, should also have the right to practice in all fields of law, even though he is certified in a particular field of law.

5. A lawyer may be certified in more than one field of the law if he meets the standards established therefor.

6. All responsibilities and privileges derived from the certification as a specialist should be individual and may not be attributed to or fulfilled by a law firm.

7. Any lawyer may publish in reputable law lists and legal directories a statement that his practice is confined to one or more fields of law, whether or not he is certified as a specialist therein.

8. Appropriate safeguards to insure continued proficiency as a specialist should be provided.

9. Adequate financing to cover the cost of administration should be derived from those who are certified as specialists.³⁵⁴

The goals underlying these guidelines and the professional specialization movement in general are directed at improving the quality of legal services, increasing public access to the profession, and decreasing unit costs.³⁵⁵ It follows then that specialization plans will only meet these goals if they are proven successful in bringing the client in need together with the proper lawyer.

There have been a number of proposals made regarding the best way to effectively certify legal specialists. California, Florida, New Mexico, and Texas³⁵⁶ have adopted specialization plans that parallel the most common of these proposals. The California plan,³⁵⁷ the oldest in existence, came into being in 1971 with the creation of the California Board of Specialization. This plan is also the most rigorous yet adopted in any jurisdiction. Pilot projects in three specialties—criminal law, workmen's compensation, and taxation—were established in 1973 under the direction of the California Board of Specialization, with advisory committees appointed to oversee each specialty.³⁵⁸ For the first two years

354. Special Committee on Specialization, *Report*, 94 A.B.A. REP. 248, 252 (1969).

355. Brink, *Let's Take Specialization Apart*, 62 A.B.A.J. 191, 191 (1976); Fromson & Miller, *Specialty Certification, Designation or Identification for the Practicing Lawyer—A Look at Midstream*, 50 ST. JOHN'S L. REV. 550, 552 (1976).

356. For an outline of the Texas plan, see *Texas Plan for Recognition, Regulation of Specialization in the Law Suggested*, 34 TEX. B.J. 407 (1971). The Texas specialization program will not be examined because it is patterned closely after the California scheme. *Supreme Court Clears Way for Specialties in Law*, 37 TEX. B.J. 669, 669 (1974).

357. CAL. BUS. & PROF. CODE § 6076, rule 2-106 (West Supp. 1977).

358. *Standards for Specialization Announced*, 48 CAL. ST. B.J. 80 (1973).

after adoption, a "grandfather" clause was in effect for individuals who had practiced at least ten years and could demonstrate a substantial involvement in a specialty area for at least three years immediately prior to application for certification.³⁵⁹ For those attorneys not eligible under the "grandfather" clause who desire specialty certification, the program requires at least five years of practice, a substantial involvement in the specialty, special educational experience in the field, and passage of a written and, in certain cases, oral examination.³⁶⁰ Once certified under this latter program, an individual must be recertified every five years, again demonstrating substantial involvement and educational experience in the specialty during the preceding five-year period. Failing to meet these requirements for recertification, a certified specialist can still take a special exam which, if passed, will suffice for recertification.³⁶¹ Once certified in California, a specialist can note his certification in legal directories and classified pages in the telephone book.³⁶²

In contrast to California's plan, the New Mexico program is best described as an identification plan.³⁶³ The New Mexico Bar Association makes no attestation as to the competence or expertise of those designated as specialists under the plan.³⁶⁴ In 1974 the New Mexico Specialization Board, which administers the plan, recognized sixty-two separate specialties.³⁶⁵ In order for a practitioner to be designated as a specialist, he must demonstrate to the Specialization Board by affidavit that he has devoted at least sixty percent of his practice in each of the past five years to a given field.³⁶⁶ Continued eligibility to use a specialty designation requires that the specialist continue to devote at least sixty percent of his time to practice in the specialty.³⁶⁷ The specialty designation allows an attorney to so state in the classified pages of the telephone book, in bar lists, and on letterheads and business cards.³⁶⁸ Those attorneys who do not meet the sixty percent

359. *Supreme Court Approved: Pilot Program in Legal Specialization*, 46 CAL. ST. B.J. 182, 184-85 (1971).

360. *Id.* at 185.

361. *New Standards Set for Certification and Recertification of Legal Specialists*, 50 CAL. ST. B.J. 309, 311, 313-14 (1975).

362. CAL. BUS. & PROF. CODE § 6076, rule 2-106 (West Supp. 1977).

363. Fromson & Miller, *supra* note 355, at 556.

364. Pickering, *Why I Favor the New Mexico Plan*, 48 FLA. B.J. 180, 182 (1974).

365. N.M.S. CT. R. GOVERN. SPEC. BD. 6, App. A.

366. N.M.C. PROF. RESP. 2-105(B)(1)-(2).

367. *Id.* (B)(4).

368. *Id.* (B)(3).

requirement may still list themselves as engaging in a limited practice.³⁶⁹

A third type of specialization plan has been adopted by the Supreme Court of Florida in an attempt to blend the best of the California and New Mexico programs.³⁷⁰ The Florida plan has developed specialty designations in twenty areas of practice.³⁷¹ An attorney can seek certification in a maximum of three areas³⁷² by application to the Board of Governors of the Florida State Bar attesting that during the past three years he has had substantial experience in a specialty or specialties and will continue to pursue a course of education in the specialties as required by the bar.³⁷³ Recertification can be obtained every three years with a showing by the specialist that he has completed at least thirty hours of approved CLE in the specialty.³⁷⁴ Once certified, a specialist may so indicate in the classified pages of the telephone book, in law lists, and on letterheads, business cards, and office doors.³⁷⁵

All of the plans as presently proposed or enacted have several important features in common: (1) participation by lawyers in the specialty programs is voluntary; (2) once a specialist is designated as such, he is not limited to practice in that specialty; (3) lawyers not designated as specialists in an area where such designations exist are not excluded from practicing in that specialty; and (4) the plans permit a limited amount of public information dissemination concerning the lawyer's specialty designations.³⁷⁶ With such common elements, the plans are in general compliance with the ABA guidelines on specialization and do appear to embody certain safeguards to protect the public from those who would abuse the opportunity to certify as specialists.

The collective experience of the states having existing plans can make a strong case for the adoption of specialty certification schemes by other jurisdictions. For example, one survey indicates that many people "do not go to lawyers because they have no way of knowing which lawyer is competent to handle their particular problem."³⁷⁷ With specialty designations the uninformed public

369. *Id.* (C)(1).

370. *In re Florida Bar*, 319 So. 2d 1 (Fla. 1975); Fromson & Miller, *supra* note 355, at 557.

371. INTEGRATION R. FLA. B. art. XVII, § 3(b) & Sched. A.

372. *Id.* § 4(d).

373. *Id.* §§ 4(a), 5(a).

374. *Id.* § 9(b)-(c).

375. *Id.* § 7(a).

376. See Brink, *supra* note 355, at 192; AMERICAN BAR ASSOCIATION, *supra* note 335, at 20 (paper presented by Roderick N. Petrey).

377. B. CURRAN & F. SPAULDING, THE LEGAL NEEDS OF THE PUBLIC 95 (1974). In this

will become more aware of lawyer services, thereby greatly increasing the accessibility of lawyers from the consumer viewpoint. Such designations will also rid the public and the profession of the notion that all lawyers are equally well equipped to handle any legal problem when, in actuality, *de facto* specialization in the profession presently exists.³⁷⁸ As has been noted, "[b]lindness to this fundamental fission inhibits the effective solutions demanded by the organized bar with respect to the problems of lawyer's competence by consumers."³⁷⁹ Moreover, once lawyer and client are brought together through the specialization process, the client will receive high quality service at a reasonable cost because the problem can be handled more speedily and proficiently by an attorney fully familiar with the legal ramifications of a particular issue.³⁸⁰ At the same time, the lawyer will benefit because specialization would improve office efficiency. Ostensibly, "[s]ince time is a lawyer's stock in trade, the specialist is able to handle more transactions in less time at greater profit to himself and at a saving to the client."³⁸¹ Equally important, specialization will encourage lawyers to improve their professional competence by participating in CLE and self-improvement programs in order to obtain or retain a specialty certification.³⁸²

Specialization, as with some of its sister proposals aimed at improving professional competency, has not met with universal acclaim. One of the most disturbing accusations is that specialization proposals are but another scheme invented by lawyers to substantially increase their incomes. One critic charges that "doctors have been using it for years to bill their patients, but it's only been recently that lawyers have realized they can make still more money if they 'specialize.'"³⁸³ Another troublesome charge is that specialization will act as a vehicle to exclude women and minorities from meaningful practice opportunities. Because spe-

survey, representative of the American adult population, 79.2% of those responding agreed that many people are not aware of which lawyers are competent and thus do not seek legal advice. *Id.*

378. Smith, *supra* note 330, at 633-34.

379. *Id.* at 633.

380. Hadlow, *Florida Plan of Specialization Is Workable*, 48 FLA. B.J. 151, 151 (1974).

381. Derrick, *Specialization: Where Do We Go From Here?*, 33 TEX. B.J. 255, 259 (1970).

382. Adams, *The Florida Plan Is Best*, 48 FLA. B.J. 185, 185 (1974).

383. von Hoffman, *Legal Specialty Newest Ripoff?*, Chi. Tribune, Jan. 2, 1975, § 2, at 4, col. 3.

cialization proposals often have educational and timeserving elements, and women and minorities have only recently been welcomed into the legal profession, "they haven't been around long enough to get the experience and they don't make enough to pay for the [required] courses."³⁸⁴ This same argument, of course, could be extended to include every young lawyer entering the profession, which seems to somewhat mitigate the accusation.

Other concerns go to the broader question of whether specialization programs really will improve the delivery of legal services by increasing accessibility and competence. If, in fact, specialization does improve professional quality and create high standards, is there not a danger that these specialists will become elite "super-lawyers" catering only to a wealthy clientele while shutting themselves off even more from the client of moderate means for whom specialization designations are primarily intended?³⁸⁵ Should members of the public believe that specialization will decrease the cost of legal services, especially in light of what specialization has done to the cost of patient care in medicine?³⁸⁶ Will specialization designations benefit the solo practitioner and "country" lawyer, many of whom are already experiencing a financial struggle, or will it primarily benefit the big-city, large-firm lawyer?³⁸⁷ Finally, does certification of specialists based primarily upon length of years in practice and some continuing education requirements really have any relationship to proficiency and competency in the practice of law?³⁸⁸ The answers are not yet available, but the questions ring true enough to act as a warning that "[t]he legal profession must take great care not to emulate the many occupational groups that have managed to convert licensure from a sharp weapon of public defense into a blunt instrument of self-enrichment."³⁸⁹

384. *Id.* at col. 5.

385. R. ZEHNLÉ, *SPECIALIZATION IN THE LEGAL PROFESSION* 12 (1975). An example of this argument is that specialists in trial advocacy, as proposed by Chief Justice Burger, would quickly evolve into British-style barristers, creating a barrister-solicitor distinction with its accompanying "elitist" notions. *Cf.* Griswold, *supra* note 345, at 137 (limitations placed on a barrister's practice make adoption of a similar system in America unlikely).

386. R. ZEHNLÉ, *supra* note 385, at 13.

387. Derrick, *supra* note 381, at 258.

388. *Cf.* Note, *Legal Specialization and Certification*, 61 VA. L. REV. 434, 442-44 (1975) (contending that certification of specialists can promote competency in the profession).

389. Gellhorn, *The Abuse of Occupational Licensing*, 44 U. CHI. L. REV. 6, 23 (1976).

*F. Legal Education and the Training of Lawyers:
Once Again, Lightly*

Robert Gorman, in a thoughtful essay on legal education written at the beginning of this decade, made the following observation:

Reform in legal education is likely to come slowly. Lawyers generally and law teachers in particular are inclined toward a careful parsing of the issues, an articulation of the pros and cons, and movement which can at best be called incremental. But movement there must be. That this proposition is becoming increasingly acknowledged is a cause for optimism in 1971. Hopefully, the end of the decade will find us with some of the answers for many of the questions which so many of us are asking at its beginning.³⁹⁰

The issues of concern to Gorman in 1971 revolved around clinical work, skills training, interdisciplinary study, individual instruction, and the two-year law school.³⁹¹ It is interesting to note that, instead of providing answers to any of the questions raised by these issues as we approach the end of the decade, this study has probably identified even more issues than those raised by Professor Gorman.³⁹² This, unfortunately, confirms all too vividly his observation that change in legal education is a slow and difficult process.

Even though the issues have only expanded without resolution, there has been a shift in the focus of the debate. Today the magic elixir is "competency." The term proves itself hard to define and even more difficult to understand when applied to law schools and the legal profession. Competence may be elusive because it is relative and situational.³⁹³ Not all lawyers possess the

390. Gorman, *supra* note 156, at 851.

391. *Id.* at 846-49.

392. The other major issues that have emerged involve the relationships between the bar and legal education, postgraduate training, professional responsibility and ethics, and the financing of legal education. All of these issues have been given separate treatment in this Section except for those concerning professional responsibility and financing. These two issues so permeate any discussion of legal education that any separate treatment, other than as part of the larger issues treated in this study, would be redundant. For an orientation to the professional responsibility and financing issues, see Section II, notes 23-28 and accompanying text *supra*. See generally P. SWORDS & F. WALWER, *THE COSTS AND RESOURCES OF LEGAL EDUCATION* (1974); Ehrlich & Schwartz, *Can Legal Costs Be Reduced by Restructuring Our Law Schools?*, *LEARNING AND THE LAW*, Summer 1975, at 29; Myers, *Curricular Reform: Budgetary Restraints and Responsibility to the Profession*, 27 *J. LEGAL EDUC.* 1 (1975); *The Second Annual Baron de Hirsch Meyer Lecture Series: The Lawyer's Role in Society*, 30 *U. MIAMI L. REV.* 789 (1976); Weinstein, *Economic Scarcity as a Threat to Academic Freedom*, *LEARNING AND THE LAW*, Winter 1977, at 29.

393. Carrington, *On the Pursuit of Competence*, *TRIAL*, Dec. 1976, at 36.

same skills, no matter how excellent their training, nor can they always control their environment. For example, one commentator has asserted that "much of the adverse comment on lawyer performance is directed at situations which all but prohibit competent performance. I have in mind the great bulk of criminal litigation which is conducted in such haste and volume that effective advocacy is prevented."³⁹⁴ Probably, then, the major element of competence is attitudinal.³⁹⁵ An attitude on the part of lawyers evincing, for example, pride and motivation will receive a positive response from consumers of legal services. On the other hand, lack of the same will be viewed as incompetence. Thus, in trying to establish standards of professional competency for lawyers, the difficulty is not only definitional but goes to what systems of measurement can and ought to be used. Perhaps the only valid measure of competency will turn out to be the "test" developed by Justice Stewart for identifying obscenity: you will know it when you see it.

The trends discussed in this Section have also signaled a growing schizophrenia in legal education as it tries to move closer to the profession while staying close to the university.³⁹⁶ At present, no amount of lip service to the notion of meshing practice and theory is going to hide the tension that exists between elements of the practicing bar and the academic community. This phenomenon is due, in part, to a natural tension between "town and gown" and to the possibility that the profession itself is "particularly rife with a sense of tension, contradiction, and ambivalence; both in our [the profession's] own aspirations, the way we criticize ourselves and each other, what societies expect of us, and what the rest of society perceives that we have to give."³⁹⁷ The tension may also be due to mixed expectations, with most academicians seeking to maintain a narrow educational focus for purposes of quality control while many practitioners (and a growing number of educators) want to turn law schools into teaching hospitals with a smorgasbord of educational functions. At present, the more traditional approach prevails. As Bayless Manning has noted: "Law schools are like MacDonald's

394. *Id.*

395. *Id.*

396. See Cramton, *Getting the Law School Down to Where the World Is*, *LEARNING AND THE LAW*, Spring 1976, at 49.

397. Leventhal, *Professional Responsibility: Keynote Address of the Second Annual Baron de Hirsch Meyer Lecture Series*, 30 U. MIAMI L. REV. 789, 791 (1976). See generally Section VII *infra*.

[sic]: they do what they do extremely well, but they don't do very many things."³⁹⁸ There is also some evidence of a generation gap apparent in this tension, with older practitioners having difficulty understanding and accepting many of the attitudes of younger lawyers and blaming the law schools for the problem. But perhaps the greatest tension arises from a difference in views of what the lawyer is—a provider of legal services or a social engineer. If the former, then why study matters unrelated to the practical needs of a lawyer-client relationship? If the latter, why not devote the majority of formal education to policy study? These extreme positions have been cleverly described by a British pedagogue as the "Pericles or plumber" phenomenon:

The image of the lawyer as a plumber is a simple one. "The lawyer" is essentially someone who is master of certain specialized knowledge, "the law," and certain technical skills. What he needs is a no-nonsense specialized training to make him a competent technician. A "liberal" education in law for such a functionary is at best wasteful; at worst it can be dangerous. Imagine the effect, it might be argued, on our drains and central heating systems if our plumbers had been made to study the history and philosophy of plumbing, the aesthetics of drains, housing policy, Roman baths, comparative plumbing, and a special subject in the water supply of the Houses of Parliament. When practitioners emphasize the value of a broad education for intending lawyers, they frequently also indicate that it is of secondary importance whether or not it is in law. Some go so far as to say that a subject other than law is to be preferred for university study. If plumbers are to study philosophy, it should not be the philosophy of plumbing.

At the other extreme is the image of the lawyer as Pericles—the law giver, the enlightened policy-maker, the wise judge.³⁹⁹

We now turn our full attention to this most pervasive of all problems facing legal education.

398. Manning, *Bridging the Gap*, *LEARNING AND THE LAW*, Spring 1976, at 47.

399. Twining, *Pericles and the Plumber*, 83 *L.Q. REV.* 396, 397-98 (1967) (footnote omitted).

SECTION VII

A CRITICAL OVERVIEW OF THE CONTENT, DYNAMICS, AND EFFECTS OF AMERICAN LEGAL EDUCATION: TRADE TECH OR IVY WALLS?

In the introduction to this Article, we noted that this Section would be devoted to an integration of ideas developed in preceding Sections and to impressions derived from our law school visits, follow-up questionnaires, and our reading of the literature on legal education. When we began the research for this project, we were not searching for specific issues; rather, our purpose was quite broad. Our intention was little more specific than one of attempting to develop a better understanding of contemporary American legal education. During the research and writing of this Article, however, as we considered the experiences of English legal education, the educational programs in other professions, and the history of and recent trends in American legal education, we were struck by the repeated emergence of one issue: the tension between “practical” and “theoretical” orientations in professional training. A corollary issue was highlighted by this tension: whether the practical-theoretical curricular mix used by most law schools has an effect on the kind of practice law school graduates select. Although this Section discusses both issues, we do not presume to reach firm conclusions for either, particularly since throughout this study we have always abjured a prescriptive purpose and since inconclusive data always preclude definitive answers. We do presume, however, to illuminate these issues in our own way and to offer the occasion for reflection by our readers.

A. *The Content and Dynamics: “Practical” Versus “Theoretical”*

What is meant by the *content* of American legal education presumably is self-evident; but the meaning of the *dynamics* of legal education may not be so clear. The dynamics of legal education consists of the interplay of forces and factors that contribute to the patterns of change or stability in American legal education. One way to approach the analysis of such forces and factors is to conceptualize American legal education as a complex set of interactions among individuals and institutions that have varying interests, values, and perspectives. Out of the clash or cooperation among people and institutions emerge the customary practices and conventional wisdom of a field of human endeavor.

In one sense, because customary practices and conventional

wisdom are passed from generation to generation, we are all the captives of history. In another sense, however, we determine our own destinies in that such practices and wisdom continue to thrive or perish depending upon the degree to which they are consonant with the subjective interests, values, and perspectives of each generation. Thus, the principal tasks involved in attempting to understand the dynamics of American legal education are the *identification* of the people and institutions who impact on legal education, the *specification* of their respective interests, values, and perspectives, and the *assessment* of the influence that each may have over educational outcomes.

In addition to such subjective factors, there are objective factors that determine or constrain events. In our historical review of English legal education,¹ for example, it was noted that the invention of the printed book impinged on the tradition of oral teaching in the Inns of Court. Similarly, the development of copying machines (especially xerography) since World War II has done much to change the study habits of students and the briefing procedures of attorneys. Objective factors clearly play a part in the change or stability of an educational system just as do human intention and will.

Both subjective and objective factors have contributed to the longstanding, and perhaps inevitable, tension between practical and theoretical training in the law.² This tension may be framed as a question: Should legal education be directed primarily toward the technical training of aspiring practitioners, toward the more traditional academic education of lawyers who have a broad theoretical understanding of law and its role in society, or toward some reasoned, negotiated, or coerced combination of the two?

1. *Examples of the dichotomy: Types of law school graduates*

In order to analyze the practical-theoretical dichotomy in legal education, it is helpful to define several "ideal types" of law school graduates. Ideal types serve to clarify reality by taking essential ideas out of the complexity of social reality, extrapolating them to their logical conclusion, and examining them uncon-

1. Section IV, notes 25-78 and accompanying text *supra*.

2. The historical review of American legal education in Section III and of English legal education in Section IV evidences the age and persistent vitality of practical-theoretical tension in America and England. See generally Sections III & IV *supra*. The existence of roughly the same issue in American and English legal education suggests that the interests and perspectives of practitioners and academicians may always be sufficiently divergent to produce some tension between practice and theory.

taminated by other influences or factors. Defining ideal types of law school graduates also helps to demonstrate the curricular alternatives law schools have along the practical-theoretical continuum.

a. *Type one: The "Technician."* If there is anything calculated to arouse the ire of many law professors, it is the suggestion that their law school is nothing more than a trade school that trains tradesmen or "Technicians." A trade school presumably would train the Technician in black letter law, probably that of a single jurisdiction, and ordinarily would be strongly oriented toward grooming its graduates to pass the bar examination of that jurisdiction. Apart from black letter law training and preparation for the passage of the bar examination, a trade school would focus on "how-to-do-it" knowledge through the provision and use, for example, of checklists, practice and procedure manuals and forms, and practical exercises in drafting and pleading. The object of a trade school would be to train Technicians who, upon graduation, would be prepared to practice law, perhaps even as solo practitioners. Some form of clinical experience would obviously be a crucial ingredient to that end.

b. *Type two: The "Scholar."* The "Scholar" is roughly the opposite of the Technician. The label "Scholar" is not meant to indicate that this type of law graduate will only become a researcher or academician; rather, the term should imply "a learned person"—one prepared to enter a learned profession. The education of a Scholar would contrast sharply with that of a Technician. Comparatively little attention would be paid to black letter law and only rarely would the law of a particular jurisdiction be emphasized. Instead, a Scholar would learn the history, traditions, and philosophical foundations of the law, in addition to current legal theories. The Scholar would also construct a broad conceptual framework into which Anglo-American substantive and procedural law could be fitted. The Scholar would be educated as a skilled legal researcher so that he would look up precise points of law for himself. Ideally, the Scholar would acquire a comparative understanding of the law by studying foreign legal systems and traditions and would be exposed to a variety of inter-disciplinary courses. The education of a Scholar would not be oriented toward the passage of any particular bar examination, since such an orientation would be regarded as beneath the dignity and purpose of legal education and since the bar examination would be viewed as a rather simple obstacle that well-educated students could surmount on their own (although possibly by taking a crash bar review course). Ordinarily, the

Scholar would receive little training in practical skills. Such skills would be learned after law school, presumably under the tutelage of practicing lawyers. In short, a Scholar would usually not be well-prepared for practice immediately upon graduation from law school, but rather would be well-equipped to learn how to practice, either by muddling through on his own or, more likely, under the guidance of others.

c. *Type three: The "Practitioner."* The "Practitioner" is a cross between the Technician and the Scholar. As such, the Practitioner is harder to define than the two "pure" types, but is also more likely to be the graduate product most law schools produce. That is not to say that the Technician and the Scholar are "straw men"; they represent opposite and quite viable alternatives in legal education products that do affect the direction law schools choose to take. But, while there may indeed be some legal educators who in their most candid moments would argue for something close to one of the pure types, most professors, even though favoring the tendencies of one or the other of the first two models, would no doubt admit the necessity of some combination of the two.

The Practitioner would generally enter the practice of law upon graduation and would therefore have an interest in learning the skills of practicing lawyers. Thus, major pressure for "bread-and-butter" courses,³ covering subjects thought to have a clear practical utility in the practice of law, would likely come from such students. A Practitioner school, influenced by the orientation of its students and their desire for bread-and-butter courses, would accept the goals of practical training and preparation for bar examinations as legitimate, although certainly not exclusive, law school objectives.

A Practitioner law school would also include significant aspects of "scholarly" training. The pressures for scholarly goals would likely come, although not necessarily unanimously, from members of the law faculty. Such faculty members encourage the study of law as an academic subject, often divorced from its practical application. The Practitioner would perceive legal subjects to be ranked and classified according to intellectual chal-

3. The scope and common usage of this designation is remarkable. We found it used with common meanings during our law school visits around the country, and it appears in the literature of legal education as well. See, e.g., Benthall-Nietzel, *An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education*, 63 Ky. L.J. 373, 389 (1975). Often bread-and-butter courses, such as evidence and procedure, overlap with bar examination subjects.

lenge rather than according to the frequency with which such subjects would probably be encountered in practice.

The pressures for practical and scholarly ends might lead ideally to a balance between practical and theoretical training. One may think that the outcome of a reasoned balance between the two extremes is such an obvious one that there is little point in posing the Technician and the Scholar as alternatives to the kind of graduate a Practitioner law school could produce. Forces for the two extremes, however, are often shifting and unequal; while balance may be the expected or even the desired outcome of these conflicting pressures, it is often not the actual one. Even if a Practitioner school attempts some reasoned balance between practical skills and theoretical understanding, there may yet be certain subjects that are explicitly or implicitly touted in that they are regarded as intellectually challenging⁴ or as leading to prestigious or financially rewarding forms of practice. Should that occur, the impact of "channeling" law students into certain fields of specialization on the delivery of legal services in low status fields would be a matter of genuine concern, even in a Practitioner school that is "balanced" between practical and theoretical orientations.

2. *Forces and factors in the dichotomy: Identification, specification, and assessment*

By demonstrating the range of orientation possibilities on the practical-theoretical continuum from which law schools may choose, the above review of three types of law school graduates provides a good backdrop against which developments in legal education can be viewed. The process of making that and other choices—the dynamics of legal education—is governed by a familiar kind of "politics" in which a number of politicians take active part. Law professors, practitioners, judges, and students are the front-runners, and an analysis of their interests, values, and perspectives, as well as their respective power and influence, provides insights into the political future of practical versus theoretical legal education.

Before outlining our impressions of the various political forces, an important caveat must be noted. Our impressions are based in part on interviews conducted at ten American law

4. For a discussion of the hierarchy of intellectual values in law school subjects, see R. Pipkin, R. Stokes, & E. Spangler, *Contingencies in the Development of Cynicism Among Law Students*, 18-19 (unpublished, undated paper presented at the 1976 Meetings of the Section on Professions of the American Sociological Association). This paper is further discussed at notes 80-87 and accompanying text *infra*.

schools and follow-up questionnaires administered at eight law schools.⁵ We have used the responses to the questionnaires only as a check on the reliability of the impressions we derived from our visits and live interviews, because the response rates were quite low.⁶ References to questionnaire responses in this Section

5. We are indebted to the American Bar Foundation (ABF) research program in legal education and to Felice J. Levine and James M. Hedegard, authors of the Law Student Inquiry. Our Law Student Questionnaire, Appendix B *infra*, is based upon their work. Their efforts in turn were built upon the work of others. For a more complete description of the derivation of our questionnaire, see Section I, note 6 *supra*. Our Law Faculty Questionnaire is found in Appendix A *infra*.

6. Following our visits we conducted a single mailing of questionnaires to a sample of students at the schools we visited. Since cooperation in the administration of the mail questionnaires was not forthcoming from two schools, questionnaires were sent to students at only eight schools. The mailing was conducted during the spring of 1976. The response rates were disappointing, due probably to the length of the questionnaire (13 pages), the fact that it contained a number of open-ended essay items, and the absence of follow-up mailings. Since the questionnaires were not the primary basis of our study, we determined not to use our limited time and resources for follow-up mailings. The response rates from the single mailing were as follows:

<u>School</u>	<u>Number mailed</u>	<u>Number returned</u>	<u>%</u>
A	331	63	19.0
B	100	9	9.0
C	100	27	27.0
D	175	34	19.4
E	100	25	25.0
F	100	13	13.0
G	125	18	14.4
H	100	13	13.0
Totals	1131	202	17.9

Of the 202 responses, 57 were from first-year students, 64 were from second-year students, 73 were from third-year students, and 4 were from fourth-year evening students. Four responses were uncodable as to class standing.

School A is a private law school in the Southwest. School B is an urban public law school in the upper Midwest. School C is a major state university in the Midwest. School D is a private law school on the West Coast. School E is a urban public law school in the lower Midwest. School F is a night law school in the Midwest. School G is an urban public law school in the Northeast. School H is a small private law school in the Midwest.

School A is the law school mentioned in Section I that was visited several times during the fall 1975 semester. Since we undertook a more in-depth study of that school than of the rest, we sent our questionnaire to 50% of the registered students at that school. School D has two distinct curricular programs, and we increased our mailing there in order to sample students from both programs. School G had a number of students away from campus on legal internships, so we increased our mailing slightly there. One hundred questionnaires were mailed to students at each of the remaining schools. Students were selected for the mailing from matriculation lists provided by the law schools. Since the number of questionnaires to be mailed was predetermined, we divided the total students at a school by the number of questionnaires to be mailed and selected every *n*th (e.g., 6th) student to receive a questionnaire. When necessary we rounded out the mailing by choosing the 99th and 100th student randomly from the matriculation list.

will thus be illustrative rather than conclusive.

a. *Law Professors.* The dominant mold of law faculty member might be called the traditional legal scholar. Such professors tend to view law as an academic discipline and to take their role definition from that of the university professor. Professional success in the traditional legal scholar's view is likely to depend on scholarly research and publication of his work in prestigious journals, which in turn is often reflected in promotion and tenure policies. One traditional career route for the legal scholar is from a high-ranking position in his law school class (preferably at a prestigious school and with law review experience), to a judicial clerkship, and then to an assistant professorship in a law school. Many legal scholars lack extensive experience in the practice of law, and some view legal practitioners with considerable disdain.

Another kind of law professor might be called the practitioner-scholar. Such professors usually have gained some professional expertise in practice, often in a highly specialized field, and then have moved to law school teaching rather early in their careers. Practitioner-scholars are more likely to identify with the practicing bar than are traditional legal scholars, but they are also inclined to use traditional teaching methods and to identify substantive legal research as one of their primary goals. This type of professor sees less cleavage between law school and the practice of law than does the traditional legal scholar and is more likely to accept practical training as one of several goals of the law school.

The clinical law teacher is a relative newcomer to legal education and, as yet, is in a distinct minority. Such teachers are quite willing to advocate practical training for students, even as a primary goal for a law school. Their view is that students should

We also mailed or distributed a separate but related 10-page questionnaire to the law faculty at the eight schools. The response rates from the faculty questionnaire were also disappointing. Questionnaires were distributed to 219 faculty members; the response rate was 19.6% (43 responses). The number of faculty responses was insufficient to allow the presentation of tabular results. Our faculty and student questionnaires are reprinted in Appendixes A & B *infra*.

We are well aware of the serious problems associated with the aggregate response rate of 17.9% for our student questionnaires. Consequently, we have limited our reliance on these data. Comparisons between schools are clearly inappropriate, especially given the small absolute number of responses from schools B, F, G, and H. We will use our student questionnaire results only to suggest hypotheses where we have supporting impressions derived from our visits and oral interviews or where other studies with more acceptable response rates also exist. We should say that we were often more impressed with the commonality of our student responses than with the differences. We believe, therefore, that the 202 student responses shed *some* light, albeit partial and tentative, on current student attitudes toward American legal education.

be prepared for practice by adding to the traditional law school curriculum those courses and settings in which students can learn by "doing" under supervision. Another significant aspect of this orientation is the belief that professional ethics and responsibility can best be taught by experiences with actual clients in real life settings.

Closely related to clinical law teachers are professors who teach tactics or techniques, although usually not in clinical settings. Such professors teach courses in trial tactics, interviewing, counseling, and negotiation and sometimes use computer-assisted instruction and simulations as teaching strategies. As with clinicians, this group is composed of relative newcomers to legal education who accept practical training as a desirable law school goal.

Another type of law professor, the interdisciplinarian, is a member of a relatively small group composed of professors with either joint or terminal degrees in fields other than law. In their desire to make law a broad liberal education, interdisciplinarians share a theoretical orientation with traditional legal scholars, but they may also be in conflict with traditionalists over the relevancy of other disciplines to achieve that end. For example, some traditional legal scholars characterize the methodology of legal reasoning as "hard" (rigorous) but describe the methodology of the social sciences as "soft" (imprecise). Social scientists who teach in law schools may be inclined to reverse that assessment.

Finally, there are law professors who can be called "activists." Such professors approach law and legal education with a social advocacy orientation. Compared to the other orientations presented above, this one does not fit well on a practical-theoretical continuum since activist professors are concerned more with the potential uses of a legal education after graduation than with the practical-theoretical balance in providing the education. Striving for social change, such professors are likely to view law and legal education as instrumental to realize social policy goals. In those law schools in which this orientation has influence, one outcome is the establishment of social action clinics that represent the disadvantaged, especially through test cases. In such instances the representation of the "cause" may be the primary object and the educational purpose may be only secondary. Of course, a purpose allied with the representational objective is the encouragement of students to enter social action roles upon graduation.

A review of some of the alternative roles of law professors⁷ illustrates that the lobbying of professors for their political preferences along the practical-theoretical continuum is hardly univocal. Nonetheless, the aggregate tendency of legal educators is to place more emphasis on the theoretical than on the practical. Several factors support this conclusion. The first, as already noted, is that law professors generally object to the trade school label. From an objective perspective, it does not appear to be inconsistent for a law school to impart sound practical training to students who, after all, will primarily spend their careers as lawyers drawing wills, handling divorces, forming an occasional corporation, and once in a great while litigating a law suit. Most lawyers do not argue great political and social issues before the nation's highest court. There is probably as much of a relationship between broad theoretical training in the law and the mundane detail of most legal practices as there is between advanced training in ophthalmology and the fitting of a pair of eyeglasses. Yet many law professors assume the opposite perspective and tend to reject the mundane and disparage the trade school's tasks.⁸

The second factor is that the formal rules of promotion and tenure in many law schools support the traditional scholar's role by requiring research leading to publication. The consequence of this emphasis is best seen in the instance of the clinical teacher who, despite a heavy workload of supervising students, is required to meet the same publication standards for promotion and tenure as must a traditional professor who teaches two classes that in total meet perhaps six hours per week. The last factor is that an informal "pecking order" seems to exist at most law schools in which the traditional legal scholar is clearly at the top and the

7. We do not presume that our description of alternative roles is exhaustive, but it does portray the principal role types we met during our visits, with one possible exception: the practitioner instructor who teaches part time, especially in evening division classes. Of all the types we describe, the part-time instructor is probably closest to the practical end of the continuum. The reason is obvious: Part-time instructors identify with the practicing bar, usually viewing practical knowledge as an extremely important component of legal education. They also have little or no pressure on them to be productive scholars.

8. A comment by Robert Clare of the Clare committee is pertinent:

In other words, if legal education leads to material success if one studies law for the goal of earning money, it is what Plato and Aristotle called *vulgar*. This is trade school stuff, not something for the law school to be involved with. We will teach them to *think* like lawyers, and it is the responsibility of the bar to teach them to *be* lawyers. Such seems to be the attitude of many law professors.

AMERICAN BAR ASSOCIATION, QUALITY LEGAL SERVICES AND CONTINUING LEGAL EDUCATION 73 (1976) (report of the 1975 National Conference on Continuing Legal Education).

other professional roles are disadvantaged in varying degrees. Clinical teaching is often at the bottom of the order.

By these observations, we do not mean to suggest that there should be no room in legal education for the traditional scholar, for the training of the relatively few students who will eventually argue great cases before the United States Supreme Court, or for the education of those who will eventually be highly skilled specialists working in large firms. Our remarks merely point out the irony that much of legal education is directed toward the training of the relatively few future "great minds of the law" rather than toward the many who will be the average practitioners of tomorrow. Most law schools, of course, do not have curricula that are deliberately oriented toward the training of elite practitioners; given the present status hierarchy of legal educators and law schools, however, success is often defined for a professor as teaching in, or for a school as becoming like, those schools that do have elite goals and status. The above factors suggest that, while there are interests in practical training within law school faculties, they are rarely dominant. Pressure for practicality usually comes from other sources.

b. Practicing attorneys. The commonplace criticism of law schools by practicing attorneys is that beginning lawyers are not equipped for practice. A survey of the Illinois bar taken in 1968 indicated that Illinois lawyers generally believed that they would have been better served by more practically oriented courses in law school.⁹ Several other studies seem to confirm this view.¹⁰ A sample of Kentucky lawyers polled in 1974 revealed that the skills of importance to the attorneys in their practices were substantive or personal rather than theoretical.¹¹ Similarly, the courses thought to be important by Kentucky lawyers in their legal edu-

9. Dunn, *Legal Education and the Attitudes of Practicing Attorneys*, 22 J. LEGAL EDUC. 220 (1969).

10. Note especially data collected by Robert Stevens on the class of 1960 at six schools. The two most common student suggestions for the improvement of the law school curriculum were the additions of forms of training other than course work and a greater orientation toward the practical problems encountered in practice. Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 592 (1973). See also, Wilson, *Profile of the Alumni*, HARV. L.S. BULL., May 1968, at 15-17; *Responses to the Board of Visitors Survey of the Stanford Law School Alumni*, STAN. LAW. SUPP., Spring 1972; Stern, *Retrospection: What Recent Law School Graduates Think of Their Education*, STUDENT LAW. J., June 1972, at 27.

11. Respondents were asked to rank skills and characteristics of most importance to them in their practices on a five-point scale, with one meaning "extremely important" and five meaning "not important to me." Of the 30 choices in the survey, the following seven skills and characteristics were listed as being the most important:

cation were preeminently practical,¹² indicated by the fact that “‘non-bread and butter courses’ or highly theoretical courses were last in order of importance.”¹³ Such results, of course, may vary according to the lawyers you ask, and there has not been sufficient research to document the attitudes of lawyers across the country.¹⁴

Whether a lack of practical skills is a problem for beginning lawyers depends upon the willingness and capacity of legal employers to provide practical on-the-job training. It is conventional wisdom that large Wall Street firms often prefer their new re-

	<u>Mean Score</u>
Knowledge of statutory law subjects	1.67
Understanding human behavior	1.71
Organizing facts	1.71
Self confidence	1.71
Thinking quickly on one's feet	1.82
Persistence	1.91
Legal research	1.98

Benthall-Nietzel, *supra* note 3, at 384.

12. The Kentucky lawyers were asked to rate broad categories of law school courses in order of importance, using the same five-point scale, with the following results:

<u>Type Subject</u>	<u>Mean Score</u>
Core courses	1.31
Practice course	1.97
Oral advocacy programs	2.06
Writing programs	2.14
Courses in administrative subjects [examples were workmens' compensation, taxation, and labor law]	2.37
Planning courses or seminars [examples were estate and tax planning]	2.53
Clinical programs [only example was legal aid]	3.22
Courses or seminars in "mind-stretching" subjects [examples were international law and law and science]	3.73

Id. at 389 (footnote omitted).

Some of the examples used above were probably misleading, such as the exemplification of clinical programs as legal aid. Moreover, the term "mind-stretching" may be touched with ridicule sufficient to bias the results somewhat.

13. *Id.*

14. One sizable ABF study of the Chicago bar is presently underway under the direction of Edward O. Laumann and John P. Heinz. See Laumann & Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 AM. B. FOUNDATION RESEARCH J. 155. Another study sponsored by the ABF, on legal education and the professional development of lawyers, is also in progress under the direction of Frances Kahn Zeameans and Victor J. Rosenblum. AMERICAN BAR FOUNDATION, ANNUAL REPORT 22 (1976).

cruits to learn practical skills in firm training programs. To the extent that this is the case, such firms in effect use law schools as screening institutions. If one assumes that only very bright students get into top law schools and that the most capable rise to the top of their classes, large firms may be more interested in the imprimatur that a top law school provides its best students than in what is learned in law school. Only firms with the time and resources to train novices can afford such an approach, however. It is probable that, in contrast to this large firm mentality, the average lawyer in America shares similar views about legal education with the Illinois and Kentucky lawyers discussed above.

c. *Judges.* The attitudes of at least certain judges can be summed up by reviewing selected recent developments in legal education and bar admissions discussed in the previous Section. On a number of occasions Chief Justice Burger has delivered critical remarks about the quality of oral advocacy in American courts.¹⁵ One outgrowth of the comments of the Chief Justice has been the creation, by Chief Judge Irving Kaufman of the Second Circuit, of the Clare committee to develop minimum educational requirements for lawyers appearing before the courts of that circuit.¹⁶ Recently the Judicial Conference of the United States has appointed a committee to look into the same matter for all federal courts in the country.¹⁷ In Indiana, bar examiners and the state supreme court, having concluded that many students who failed the bar examination had not had courses in law school on tested subjects, adopted Rule 13 requiring students to complete fifty-four credit semester hours of designated subjects as a condition precedent to taking the Indiana bar examination.¹⁸ These signals about perceived deficiencies in legal education indicate that substantial pressure for practical training is now coming from the judiciary.

d. *Students.* Surprisingly, there has been relatively little research on student attitudes toward legal education. Fortunately, that which does exist is recent, and much more research is presently underway.¹⁹ The most comprehensive study pub-

15. See, e.g., Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973) (4th Annual John F. Sonnett Memorial Lecture).

16. See Section VI, notes 261-94 and accompanying text *supra*.

17. See Section VI, notes 313-18 and accompanying text *supra*.

18. See Section VI, notes 295-312 and accompanying text *supra*.

19. A number of research projects on legal education and the legal profession are being sponsored and/or coordinated through a major program of the ABF. For a list of ABF-sponsored studies in this budding field of research, see AMERICAN BAR FOUNDATION,

lished to date is that done by Robert Stevens.²⁰ Stevens' effort covered much more than the practical-theoretical continuum treated in this Section, but several aspects of his work are particularly relevant to the current discussion. The most notable findings were that seventy-five percent of the students surveyed evaluated the curriculum at their respective schools as being on the theoretical side of a practical-theoretical continuum; fourteen percent of the students thought their schools had achieved a balance between the two; and only eleven percent thought that the curriculum of their school was on the practical side.²¹ When asked what they thought the curriculum should be, the students tended to favor a balance between the two orientations, but "at each school the students felt that curriculum should be less theoretical and more practical than they perceived it to be."²²

Stevens also presented survey results from the 1960 and 1970 classes at six schools that revealed skills which lawyers and law students thought their respective law schools *did* and *should* teach.²³ The ability to "think like a lawyer" was perceived by both classes in all schools as deserving and receiving the most emphasis in legal education, and each group of students agreed that more emphasis should be placed on that skill than the schools were perceived to have placed.²⁴

Compared to the class of 1960, the class of 1970 generally perceived a lesser importance for the teaching of substantive law. Only at the University of Southern California did a majority of students believe that the teaching of substantive law deserved "great emphasis"; the class of 1970, however, still followed the general trend by placing significantly less emphasis on the teaching of substantive law than did the class of 1960.²⁵ Students at the remaining schools displayed an interesting range of opinion on

supra note 14, at 14-15, 20-25, 31-33.

20. Stevens, note 10 *supra*.

21. *Id.* at 659. Data are reported for 546 students from the 1970 class of eight law schools. *Id.* at 558.

22. *Id.* at 661.

23. The six schools were Boston College, the University of Connecticut, the University of Iowa, the University of Pennsylvania, the University of Southern California, and Yale University.

The results are presented for the two classes in each school, rather than combined, making summary difficult.

24. Stevens, *supra* note 10, at 593. Of course, what it means to "think like a lawyer" is quite elusive, but presumably it has to do with the skills of analysis and synthesis of legal concepts. Perhaps it is best represented by the skills that come from a well-taught Socratic class.

25. *Id.* at 594; *see id.* at 699 (Table A.21).

this question. At Yale, for example, only eleven percent of the class of 1970 thought that the teaching of substantive law had received great emphasis, but only eighteen percent thought that it *should* receive great emphasis. The comparable figures for the University of Connecticut were forty-one and fifty-nine percent.²⁶ In the aggregate, although some students (like those at Yale) did not perceive the absolute importance of substantive legal knowledge to be great and although the absolute importance of substantive law as perceived by students had declined between 1960 and 1970, at each school surveyed the class of 1970 nevertheless thought there should be more emphasis placed on the teaching of substantive law than was then the case. The same class thought that other skills—such as knowledge of procedural rules, legal writing, legal research, negotiation, counseling, and investigation—also deserved more emphasis.²⁷ The perceived disparity between the emphasis that the schools actually placed on these skills and the priority that the students thought the subjects deserved was substantial in most instances.

Our student questionnaire asked about most of the skills that appeared in Stevens' instrument, but with two structural revisions. First, we changed the nature of Stevens' inquiry about the "teaching emphasis" placed on certain skills by the schools to the level of various skills students feel that they "will have" or "should have" acquired upon graduation. Second, we also changed the answer measurement from a four-point scale ranging from "no emphasis" to "great emphasis" to a 0-100 point scale with five-point intervals ranging from "no skill" to "highly skilled." In appraising our results, set out in Table VII-1, one should keep in mind the limitations of our data.

TABLE VII-1.—*Predictions of lawyers' skills acquired upon graduation: mean values and differences*²⁸

	Should have	Will have	Difference
Ability to "think like a lawyer"	91.10	83.88	7.22
Proficiency at legal research	87.90	80.75	7.15
Proficiency at legal writing	85.72	77.29	8.43
Knowledge of legal ethical standards	85.59	74.54	11.05
Ability to interview and counsel clients	84.02	67.22	16.80
Ability to investigate the facts of a case	79.87	66.87	13.00

26. *Id.* at 699 (Table A.21).

27. *Id.* at 594; *see id.* at 699-701 (Tables A.21-A.26).

28. Based on the responses of 202 students from eight schools.

Knowledge of procedural legal doctrine and rules	79.77	69.07	10.70
Knowledge of substantive legal doctrine and rules	77.01	73.85	3.16
Ability to negotiate	76.59	63.16	13.43
Proficiency at trial advocacy	74.09	60.42	13.67
Knowledge of pertinent information and methods from other disciplines	68.86	60.15	8.71
Proficiency at appellate advocacy	67.09	60.78	6.31
Knowledge of legal philosophy and theory	62.34	59.20	3.14

As the results shown in Table VII-1 indicate, the ability to "think like a lawyer" once again emerges as the most important skill that should be and is taught in law school. Our data also illustrate another interesting result: in each instance the skills the average student thinks he *will* have are less than those he believes he *should* have. This correlation would not be particularly surprising were it not for the remarkably high values that appear in the "will have" column.²⁹ Also notable is the fact that the two items that are not bread-and-butter subjects—"information and methods from other disciplines" and "knowledge of legal philosophy and theory"—appear at or toward the bottom of the "should have" list. Finally, the closest approximation between the "should have" and the "will have" items appears in the instances of "knowledge of substantive legal doctrine and rules" and "knowledge of legal philosophy and theory." Our respondents apparently believe that their respective schools are best at teaching these subjects in the desired quantity.

A recent study sponsored by the American Bar Foundation and administered by Ronald Pipkin (ABF-Pipkin study) also reports that students "tend to believe law school fails to provide them with practical professional information."³⁰ This conclusion was based on a three-item scale, each item having five possible responses ranging from "strongly agree" to "strongly disagree." The scale scores were standardized so that a score of zero would reflect a strong belief that law school does not prepare a student

29. While we have no comparable basis for judgment, the degrees of skills these students thought they would have at graduation were in most instances much higher than we expected. We thought that most students would feel quite ill-prepared, for example, to investigate the facts of a case or to negotiate a settlement because of a lack of experience. Participation in clinical legal education programs cannot account for the expressed confidence, since only 44 of 202 students (21.8%) reported clinical experience.

30. Pipkin, *Legal Education: The Consumer's Perspective*, 1976 AM. B. FOUNDATION RESEARCH J. 1161, 1176. This study was based on 517 students at five law schools. Two of the schools were classed as nationally prominent, and the other three schools were classed as regionally prominent.

adequately for practice, while a score of 100 would indicate a strong belief that law school provides a student with necessary practice skills. The reported mean scale scores are given in Table VII-2:

TABLE VII-2.

	<u>All students</u>	<u>First year</u>	<u>Second year</u>	<u>Third year</u>
Preparation scale ³¹	39.5	43.2	39.4	35.4

Students at the five schools surveyed were also asked to evaluate changes that would be likely to increase their satisfaction with law school. The three items receiving the most favorable evaluation were smaller classes, more feedback on academic progress, and, most interesting for our purposes, more teaching of practical skills.³²

To say, however, that students generally support more emphasis on the teaching of practical skills does not really gauge the magnitude of student satisfaction or dissatisfaction with law school curricula. What evidence that does exist on the depth of student attitudes is mixed. The many idiosyncratic articles and commentaries written by law students give the impression that discontent is intense and pervasive.³³ The open-ended essay responses to our student questionnaire were less unified and displayed many shades of satisfaction and dissatisfaction. A few students reacted negatively to what they perceive as an excessive "nuts-and-bolts" mentality on the part of other students and faculty. Such students often mentioned that they would like to consider the "whys" as well as the "whats" of the law. The over-

31. The items for the preparation scale were:

1. Law school has given me a good sense of the professional tasks that lawyers perform.
2. Law school has not yet taught me the skills necessary to handle most simple legal problems that clients might bring.
3. I can probably learn more law by working summers for a law firm or government legal agency than I can in most courses.

Id. at 1169 n.29.

The correlation coefficient between the preparation scale scores and year of study was -.16 and was statistically significant. This result indicates that as students move from the first to third years, there is a slight tendency toward an increasingly strong belief that law school does not prepare one adequately for practice. In all three years, however, students already hold a rather strong belief that law school does not prepare one for practice.

32. Possible evaluations for each suggested change were 2=yes, 1=maybe, and 0=no. Mean values for the three most approved items were: smaller classes (1.65), more feedback on academic progress (1.50), and more teaching of practical skills (1.46). More clinical experience was rated at 1.30, and the lowest ranking item was the suggestion that more material be covered in class (0.41). *Id.* at 1184-85 (Table 5).

33. For references to a number of such articles, see *id.* at 1163-64 nn.9-13.

whelming impression we derived from the questionnaires, however, was that students frequently mention and seem to have an intense desire for a more practically oriented curriculum. Fortunately, there is better evidence than either the subjective accounts of a few students in journals or our impressionistic reading of students' essay responses. Several studies have sought to measure students' satisfaction or dissatisfaction with law school curricula more objectively.

The Warkov-Zelan study,³⁴ based on a 1962 survey, found general contentment among students in the second semester of their first year of law study. Most notable was an apparently high level of satisfaction with law school curriculum and course offerings.³⁵

The ABF-Pipkin study³⁶ asked students to rate law school on a four-point scale ranging from "boring" (1) to "stimulating and interesting" (4). The mean response was 3.06, close to the third scale point "generally interesting with some periods of boredom." First-year students rated law school at 3.43, and interest declined in the second and third years to 2.96 and 2.78 respectively. Pipkin also asked students to rate their satisfaction with law school in five points ranging from "highly dissatisfied" (1) to "highly satisfied" (5). The average was 3.88, near the "moderately satisfied" point.³⁷ He then correlated interest and satisfaction with other variables, including the preparation scale discussed above, and found that

[a]mong students at both the national and regional schools, satisfaction with law school and interest in law school are related to the perception that their legal educations include a rational pedagogy, adequate professional preparation, and instruction from a faculty committed to teaching and to ethical issues. Their level of satisfaction and interest in law school is tied to whether they believe this is what they are receiving.³⁸

34. S. WARKOV & J. ZELAN, *LAWYERS IN THE MAKING* (1965).

35. *Id.* at 72. This study used a sample of 1,179 law students. In reporting the data, the authors broke the students into three categories, based upon academic performance, and also divided the law schools into three groups, based upon median LSAT scores ("Stratum I" indicating the highest and "Stratum III" the lowest scores). The range of percentages of students who rated the curriculum and course offerings as "excellent" or "good" was from 74% to 95%. Students at Stratum III generally expressed greater dissatisfaction than students at other schools, and high academic performance students at Stratum III schools expressed the most dissatisfaction with curriculum and course offerings.

36. Pipkin, note 30 *supra*.

37. *Id.* at 1176-77.

38. *Id.* at 1177.

Using a 0-100 point scale with five-point intervals ranging from "highly dissatisfied" to "highly satisfied," we sought to employ our student questionnaire to measure the general feelings of students about law school. Our results are presented in Table VII-3:

TABLE VII-3.—Question Presented: *In general, how do you feel about law school to date?*³⁹

Rating	First year		Second year		Third year	
	number	%	number	%	number	%
0-55	4	7.0	19	29.7	13	18.3
60, 65	2	3.5	11	17.2	6	8.5
70, 75	17	29.8	10	15.6	22	31.0
80, 85	20	35.1	13	20.3	15	21.1
90-100	14	24.6	11	17.2	15	21.1
Totals ⁴⁰	57	100.0	64	100.0	71	100.0

These results appear roughly equivalent to Pipkin's—the students who responded to our questionnaire gave law school a "gentleman's C." The available evidence indicates that students are moderately satisfied with law school, but that satisfaction may decline somewhat from the first to third years. The proper conclusion, we think, is that the often anguished accounts published by students in various journals are not the typical reactions of most students to law school. The desire of students for a more practically oriented curriculum seems to result from a clear and solid preference, but it has not yet produced an overwhelming alienation from law school generally.

A desire for a more practical curriculum must be related to students' intentions about the practice of law. How many students intend to practice law? How many use legal education as a preparation for other careers or simply as a "haven" for further education? It should not be surprising that the clear majority of law students do intend to enter practice, although some undoubtedly use a legal education as preparation for another career. The data reported by Stevens, presented in Table VII-4, indicate the following intentions:⁴¹

39. The chi square statistic for the table without the categories collapsed was 88.726, with 72 degrees of freedom ($p = .086$). The table here is collapsed to approximate traditional grading categories (below 60=F, 60-65=D, etc.).

40. The mean values for the first, second, and third years were 77.4, 66.4, and 69.8 respectively. Including fourth-year evening student responses and responses uncodable as to year in school, there were 199 responses to this question. Based on that total, the total mean was 71.0, the total median was 76.1, and the total mode was 75.

41. Stevens, *supra* note 10, at 581, 694 (Table A.10).

TABLE VII-4.—Question Presented: *When you entered law school, did you intend to become a practicing attorney?*

Law School	Class of 1960		Class of 1970	
	yes ⁴²	no	yes	no
Boston College	90%	10%	96%	5% ⁴³
Connecticut	83%	17%	94%	6%
Iowa	80%	21%	86%	14%
Pennsylvania	91%	9%	94%	6%
University of Southern California	96%	4%	90%	10%
Yale	90%	10%	72%	28%

Even though the question we asked was slightly different, the results from our student survey are similar to those of Stevens. Our results are shown in Table VII-5:

TABLE VII-5.—Question Presented: *Do you intend to become a practicing lawyer?*

Response	First year		Second year		Third year		Total ⁴⁴	
	number	%	number	%	number	%	number	%
Definitely yes	33	57.9	38	59.4	45	61.6	124	61.4
Probably yes	23	40.4	20	31.3	22	30.1	65	32.2
Probably no	1	1.8	4	6.3	3	4.1	8	4.0
Definitely no	0	0	2	3.1	3	4.1	5	2.5

Thus nearly ninety-four percent of the students responding to our questionnaire reported that they had a *current* intention to practice law. We also asked whether they intended to take a bar examination. Of our respondents, 201 (99.5%) reported such an intention.⁴⁵ Only one student, who was in the first year of law school, did not intend to take a bar examination.

In viewing the results of our survey, it is important to remember that none of the schools we visited is of the status and reputation of Yale. It is common knowledge that some students go to law school to train for nonlegal leadership positions in our society. Elite schools like Yale are especially noted for such students. The great majority of students at most schools, however, intend to practice law. We suspect that only at schools like Yale would

42. We have collapsed the "definitely yes" and "probably yes" as well as the "definitely no" and "probably no" categories. Data for both years are retrospective in that 1960 and 1970 graduates were asked to recall their attitudes upon entering law school.

43. Due to rounding, some percentages in this table and Table VII-5 total more or less than 100%.

44. The differences among years in law school are not statistically significant.

45. The comparable figures for the class of 1972 in Stevens' survey was 92.5% "definitely yes" and 0.2% "definitely no." Stevens, *supra* note 10, at 630.

there be a sizable number of students who go to law school with little or no intention to practice law. A broadly theoretical approach to legal education, therefore, may be much more appropriate at schools like Yale than at the average American law school.⁴⁶

We can further analyze students' reasons for coming to law school by comparing other results of Stevens' survey with our own. Stevens found that "students today enter law school seeking intellectually stimulating professional training. Despite current assertions that many of today's law students are disenchanted with traditional practice, the desire for professional training remains an important reason for entering law school."⁴⁷ Stevens' conclusion is based on the fact that his respondents assigned considerable importance to "desire for professional training," "interest in subject matter," and "desire for intellectual stimulation" as reasons for going to law school.⁴⁸

Stevens' categories were adapted for use in our questionnaire. We did not include, however, one response choice ("desire for professional training"), and one more response category ("little importance") was added. Using a four-point scale with intervals ranging from "great importance" (1) to "no importance" (4),⁴⁹ we asked students to evaluate the importance of reasons affecting their decision to enter a profession. Table VII-6 shows the results from this portion of our student survey:

TABLE VII-6.—*Importance of reasons for choosing the legal profession:
mean values*

An interest in subject matter	1.41
A desire for independence	1.44
A desire for intellectual stimulation	1.52
Opportunity to be helpful to others and/or to be useful to society in general	1.62
A desire for varied work	1.65
Prestige of the profession	2.10
A desire for stability and security	2.11
Financial rewards	2.14
A desire to help restructure society	2.16
Anticipated enjoyment of the activities of lawyers	2.24
A liking for argument and debate	2.31

46. Students at Yale and Stanford were in fact more likely to prefer a theoretical orientation than the students at other schools. *Id.* at 661.

47. *Id.* at 576.

48. *Id.* at 576-77 (Tables 8-10). Stevens used a three-point scale for assessing the importance of various factors ("great importance," "some importance," and "none").

49. "Some importance" and "little importance" were assigned two and three points respectively.

Gaining professional expertise useful in solving personal problems	2.44
A desire to be of service to the underprivileged	2.45
A desire to handle other peoples' affairs	2.62
A desire to go into business	2.88
A desire to go into government service	3.02
A desire to become a politician	3.02
Family influences	3.03
A desire to become a legal educator	3.38

Our results are generally in accord with those of Stevens⁵⁰ and indicate that the reasons of greatest importance to students for entering law school are entirely consistent with traditional aspects of the legal profession. It is especially interesting that our respondents did not assign very high importance to financial rewards and prestige of the profession as reasons for entering law school. Survey results, of course, are often influenced by a desire not to appear venal or self-seeking, and perhaps the importance of money and prestige are understated here for that reason. Stevens took note of the fact that "a vast majority of all students surveyed indicated that 'prestige' was of some importance to them,"⁵¹ but that finding may be slightly misleading since the prestige of one's position is likely to be of *some* importance to most people, regardless of their occupation. We cite instead the fact that about twenty-eight percent of our respondents said that prestige was of little or no importance to them, while only about five and seven percent of our respondents said that interest in subject matter and intellectual stimulation, respectively, were of little or no importance.

We conclude from our review of these findings that law students primarily want an interesting career, substantial independence, and the opportunity to perform a useful service. In short, our respondents went to law school because they wanted to be lawyers. Prestige, financial rewards, and security are important collateral benefits. That, at least, is the way our respondents would like to present themselves to others.

One additional factor discernible from Table VII-6 should be compared with Stevens' results. Stevens found a rather clear trend from 1960 to 1972 in the increasing importance to law students of "service to the underprivileged." Our respondents, questioned in the spring of 1976, are more like the class of 1960 in this

50. Stevens' top five response categories were: (1) desired independence; (2) professional training; (3) interest in subject matter; (4) varied work; and (5) intellectual stimulation. *Id.* at 616 (Table 35).

51. *Id.* at 578.

respect than they are like the classes of 1970 or 1972.⁵² Thus, consistent with the impressions we derived from our law school visits and with current conventional wisdom, the trend detected by Stevens was most likely evanescent.⁵³

Our questionnaire further explored reasons for choosing the legal profession by asking students to select the single most important reason for their choice from the factors listed in Table VII-6. The results of this exploration are presented in Table VII-7:

TABLE VII-7.—*Most important reasons for choosing the legal profession*

	<u>number</u>	<u>%⁵⁴</u>
A desire for independence	39	20.7
Opportunity to be helpful to others and/or useful to society in general	27	14.4
An interest in subject matter	27	14.4
A desire for intellectual stimulation	24	12.8
A desire for varied work	12	6.4
A desire to help restructure society ⁵⁵	10	5.3
Totals	139	74.0

52. See *id.* at 579 (Table 14). In tabular form, these are the summary comparisons of the range of law students' desires at the different schools to serve the underprivileged:

	<u>Stevens' respondents</u>			<u>Our respondents</u>	
	1960 (6 schools) <u>% range</u>	1970 (6 schools) <u>% range</u>	1972 (4 schools) <u>% range</u>	Great	1976 (8 schools) <u>%</u>
Great	3-13	7-27	24-48	Great	19.3
Same	11-33	36-59	44-59	Some	34.2
None	53-84	34-54	8-28	Little or none	46.5

Available research indicates that student activists of the late 1960's and early 1970's were often from upper-middle-class backgrounds and from leading undergraduate institutions. Such students would have had a better than average chance of admission to more prestigious law schools.

53. Of course, we must keep in mind our limited data base and the fact that the schools we visited were not of the status of Yale, Pennsylvania, or U.S.C. See note 6 *supra*. See also H. Erlanger & D. Klegon, *Socialization Effects of Professional School: The Law School Experience and Students' Orientation to Social Reform*, at Table 7 (unpublished, undated study supported by the ABF and funds granted to the Institute for Research on Poverty at the University of Wisconsin by the Office of Economic Opportunity). For a discussion of this table, see note 95 and accompanying text *infra*.

54. Based on a total of 188 responses.

55. The item "a desire to help restructure society" implies a need to restructure society. Such restructuring presumably might be from a radical, liberal, conservative, or even middle-of-the-road perspective. The low response rate for "a desire to be of service to the underprivileged," chosen by only four of 188 or 2.1% of the students, indicates that restructuring for the student here would not be from a desire to restructure society for the benefit of the disadvantaged.

As expected, the results shown in Table VII-7 simply confirm those of Table VII-6 and also are in accord with Stevens' findings.

Another way to probe students' purposes in attending law school is to inquire about desired forms of practice. Using a four-point scale in integral intervals ranging from "highly acceptable" (1) to "not acceptable" (4),⁵⁶ we asked each student to rate organizations "as to whether you think they would be acceptable work settings for you during most of your career." The results from this inquiry appear in Table VII-8:

TABLE VII-8.—*Acceptability of practice settings: mean values*

Small partnership	1.48	State agency	2.64
Small firm (less than 10)	1.48	Public defender's office	2.70
Judgeship	1.81	Poverty law office	2.83
Solo practice	2.06	Corporation or bank (house counsel)	2.84
Medium firm (10 to 40)	2.11	Large firm (more than 40)	2.94
Federal agency	2.42	Nonlaw job in general	3.00
Public interest law office	2.44	Nonlaw job, government	3.05
District attorney's office	2.51	Nonlaw job, business	3.06
Teaching	2.56		
Municipal attorney	2.62		

Most notable about these results is the rejection of nonlaw jobs by our respondents. The law students we polled clearly want, first, to practice law and, second, to practice in settings that are congruent with the traditional image of the lawyer who works on his own or with a manageable number of associates. These conclusions are accentuated by observing the results, summarized in Tables VII-9 and VII-10, of asking students to pick from the list of Table VII-8 the single most desirable and least desirable work settings.

TABLE VII-9.—*Most desirable work setting*

	<u>number</u>	<u>%⁵⁷</u>
Small firm	53	28.6
Small partnership	37	20.0
Solo practice	19	10.3
Judgeship	16	8.6
Medium firm	14	7.6
Totals	139	75.1

56. "Moderately acceptable" and "minimally acceptable" were assigned two and three points respectively.

57. Based on a total of 185 responses.

TABLE VII-10.—*Least desirable work setting*

	number	% ⁵⁸
Corporation or bank (house counsel)	34	18.2
Nonlaw job in general	29	15.5
Large law firm	25	13.4
Poverty law office	23	12.3
Teaching	15	8.0
Public defender's office	14	7.5
Totals	140	74.9

There are some notable differences between our results and those of Stevens for similar questions. From the class of 1972, 46.3% of Stevens' respondents intended to enter some form of private practice.⁵⁹ Our categories were not identical; however, combining all the forms of private practice that we list, our figure for private practice is 69.2%. About twenty-five percent of Stevens' respondents foresaw a career in a large firm;⁶⁰ our figure for large firms is 2.7%. Of Stevens' respondents, 20.6% expected to spend most of their careers in a small firm;⁶¹ in our instance the combination of small firm, small partnership, and solo practice totals 58.9% of our respondents. About one-fourth of Stevens' respondents foresaw careers in public defender, legal aid, civil rights, or radical legal activities (lawyers' communes).⁶² Our categories were quite different, but combining "poverty law office," "public interest law office," and "public defender," we only account for 4.9% of our respondents. The differences between our results and Stevens' may be ascribed to several possibilities. First, we should note again the limits of our data and the fact that respondent self-selection coupled with a low response rate makes generalization problematic. Second, Stevens' categories and ours are not identical. Third, Stevens' sample included more traditionally prestigious schools than ours, thus yielding perhaps a different student respondent mix.⁶³

For the purposes for which we have included these data here, the differences between Stevens' results and ours are not critical. Somewhat less than half of Stevens' respondents and slightly more than two-thirds of ours want to enter the private practice

58. Based on a total of 187 responses.

59. Stevens, *supra* note 10, at 634.

60. *Id.* at 633 (Table 44).

61. *Id.* at 631-32 (Table 43).

62. *Id.* at 632 (Table 42), 634.

63. *E.g.*, Yale, Michigan, and Stanford in the instance of his sample for the class of 1972.

of law and presumably to be well-trained for that purpose. Once again, data from more prestigious schools reflect that a multifaceted educational program may be needed to satisfy a greater diversity of expectations at those schools. Even in prestigious schools, however, only about twenty-five percent of the students expect to enter large firms. Thus, more than twenty percent of the students from Stevens' sample expect to practice in small firms. The conclusion is obvious: There are a significant number of students, even at the best schools, who want or need practical legal training.

B. The Effects: Does Legal Education Encourage Certain Kinds of Practices over Others?

The tension between practical and theoretical orientations in legal education is clearly an active one. The push for more practical training stems primarily from students, supported indirectly by many judges and practitioners, while the majority of legal educators generally prefer to retain a more traditional, theoretical approach. Obviously, the dynamics of these competing forces is manifested in a variety of resolutions, expressed in various law school curricula, to the practical-theoretical tension. Still, at least in the opinion of the students we surveyed, most law schools are more theoretically inclined than most students would like.

In light of this apparent student dissatisfaction with an inadequate practical orientation in law school, it becomes particularly important to consider whether the practical-theoretical mix in the curriculum used by most law schools has an effect on student perception of the desirability and prestige of various practice types and on the kind of practice students will eventually select. Evidence of an answer to this question is limited and mixed, but an examination of results from a number of studies, including our own, suggests some possible conclusions.

1. The Laumann-Heinz study

A recent article by Laumann and Heinz, based on personal interviews with a sample of Chicago lawyers conducted in 1975, reviewed the relative prestige of various forms of specialization in the legal profession.⁶⁴ The results of their interviews are best summarized by the authors in the following conclusions:

64. Laumann & Heinz, *supra* note 14, at 155.

First, the top of the prestige ranking is quite clearly dominated by specialties that might be characterized as "big business" law. . . .⁶⁵

At the other end of the prestige ranking, we find the sorts of legal work that are characteristically done for individuals—general family practice, divorce, personal injury, consumer, and criminal law.⁶⁶

The prestige rankings were compared with other characteristics of the thirty specialties evaluated. The specialties ranking highest in prestige tended to also have high scores for their intellectual challenge. A high level of ethical conduct was generally associated with increased prestige of a specialty, and, with the exceptions of civil liberties work and general family work for poverty clients, low imputed ethical conduct scores were given to personal injury plaintiffs' work, divorce, and criminal defense, specialties that also have a low prestige ranking.⁶⁷ One surprising result was that, while the highest incomes tended to be associated with the specialties at the top of the prestige list and the lowest incomes with the least prestigious specialties, there was not a significant correlation between income and prestige for the specialty list as a whole.⁶⁸

High-ranking prestige specialties generally received low scores on the freedom of action scale.⁶⁹ In light of the desire for independence expressed by students as a reason for choosing the legal profession, noted in the review of students' attitudes above,⁷⁰ the apparently inverse relationship between prestige and freedom of action is especially significant. The survey also uncovered a provocative association between prestige ranking and the pro bono content of a specialty's practice:

65. Examples are securities, tax, antitrust (plaintiffs), antitrust (defendants), patents, banking, public utilities, and general corporate—the top eight items in the list of 30. *Id.* at 166-67 (Table 1).

66. *Id.* at 177.

67. According to the authors, these specialties were characterized as "unsavory":

That is, the circumstances of the cases are unsavory, by hypothesis, for reasons quite distinct from the unethical conduct of practitioners in the field. There may be a tendency, then, to see work that is "dirty" in one respect as dirty in another, or the labeling process may lead to unethical conduct in work that is already derogated for other reasons.

Id. at 181.

68. *Id.* at 191.

69. Freedom of action refers to the degree to which lawyers in a field are free to pursue their own course of action rather than being governed by clients or other attorneys. *Id.* at 175.

70. See notes 54-55 and accompanying text *supra* (Table VII-7).

Our results . . . indicate that the most important feature of a legal specialty in accounting for its relative prestige standing is its *pro bono* score. The higher a specialty stands in its reputation for being motivated by altruistic (as opposed to profitable) considerations, the lower it is likely to be in the prestige order.⁷¹

Seemingly, the profit motive, associated as it is in this instance with the representation of business interests, has much to do with the prestige of a legal specialty.

Laumann and Heinz also presented associations between specialty prestige and the background characteristics of lawyers who tend to practice in prestigious specialties. With one notable exception,⁷² graduates of elite schools tend to practice in highly prestigious specialties. As is perhaps to be expected, in view of the correlation between specialty prestige and intellectual challenge, there was also a strong relationship between the percentage of elite school graduates in a field and the perceived intellectual challenge of that field.⁷³ Prestige specialties tended to be practiced by lawyers in firms of more than thirty members and *not* to be populated by solo practitioners.⁷⁴ This fact is not surprising, but it again offers an interesting contrast with the respondents to our student questionnaire who expressed a strong preference for practice in small firms and who found large firms to be among the least desirable settings for practice.

Remembering that it may not be proper to apply the conclusions of the Laumann-Heinz study of Chicago lawyers in 1975 to other times and places, the results nonetheless pose some difficult questions. To what extent do law schools contribute to the development of attitudes like those of the Chicago bar? Do prospective

71. Laumann & Heinz, *supra* note 14, at 202.

72. The exception is civil liberties work, which has the highest percentage of elite school graduates of any specialty even though it is 20th in prestige among 30 specialties. Civil liberties ranks high on *pro bono*, ethical conduct, and freedom of action. This combination of rankings leads the authors to what is, if correct, an appalling conclusion:

On the face of these data, then, one interpretation might be that the prestige of civil liberties work suffers because its practitioners enjoy too much autonomy in their work and have an unseemly reputation for altruistic motivation! But perhaps it would be well to be tentative about this conclusion, having a decent regard for the limitations of our data—in particular, the sample size. Another, perhaps more plausible, explanation may lie in the lack of congruence between the dominant social and political values of the legal profession and those of the civil liberties specialty.

Id. at 186.

73. *Id.* at 185.

74. *Id.* at 186-87.

law students have a tendency toward such attitudes even before entering law school?

2. *Our own study*

Using a 0-100 point scale with five-point intervals ranging from "no interest" to "great interest," we asked our student respondents to rate nineteen areas of specialization "as to whether they would be of interest to you during your legal career." Our results are given in Table VII-11:

TABLE VII-11.—*Interests in field of specialization*

	<u>mean</u>	<u>median</u>
Constitutional law	65.5	72.4
Tort law	65.3	72.7
Law reform	63.7	73.4
Trusts and estates	61.8	72.2
Civil liberties law	59.9	68.9
Corporate law	57.5	65.5
Family law	56.6	62.1
Tax law	56.3	63.9
Criminal law	54.9	61.1
Poverty law	51.2	59.3
Administrative law	50.9	51.7
Labor law	50.1	52.4
Antitrust	48.5	49.7
Bankruptcy	44.9	50.0
International law	44.1	47.5
Insurance law	41.8	41.9
Patent and copyright law	36.7	34.1
Maritime law	29.0	21.9
Military law	24.1	12.0

Except for the last few items on the list, which are areas of high specialization or are likely to be outside the experience of the average law student, the means tend to be clustered toward the middle of the 100-point scale. The standard deviations of the items range from a low of 26.5 (for military law) to a high of 32.0 (for criminal law), indicating a substantial diversity of student interest for each subject area ranked.⁷⁵

This finding was bolstered by responses to questions asking students to select from the above list either their single most preferred or least preferred field of specialization. Results from those questions are presented in Tables VII-12 and VII-13:

75. The importance of constitutional law, criminal law, labor law, military law, and trusts and estates appears to vary significantly across the three years of law school. The importance of constitutional, criminal, labor, and military law declines slightly across the three years. The importance of tax law and trusts and estates increases slightly. The relationships are, however, quite weak.

TABLE VII-12.—Question Presented: *Which of the fields listed is of greatest importance to you?*

	<u>number</u>	<u>%⁷⁶</u>
Tax law	28	14.4
Corporate law	22	11.3
Constitutional law	21	10.8
Criminal law	21	10.8
Tort law	19	9.7
Trusts and estates	15	7.7
Totals	126	64.7

TABLE VII-13.—Question Presented: *Which of the fields listed is of least interest to you?*

	<u>number</u>	<u>%⁷⁷</u>
Military law	56	29.0
Maritime law	25	13.0
Corporate law	14	7.3
Tax law	14	7.3
Criminal law	10	5.2
Patent and copyright law	10	5.2
Totals	129	67.0

Note the presence on the greatest- and least-interest lists of three common items: tax law, corporate law, and criminal law. This again seems indicative of a substantial diversity of student interest, as does the fact that less than fifteen percent of our respondents agreed on a single field of greatest interest. Although there is much more agreement on the field of least interest, with military law distinctly the least desirable area, a significant degree of diversity is nevertheless apparent.

Our reading of the open-ended essay responses of our respondents also revealed a substantial diversity of viewpoints and interests. Note that we are speaking of subjective viewpoints and interests from the perspective of the individual student. Some students were willing to characterize not only their own feelings but also the aggregate tendencies of *other students* at their respective schools. One student, for example, commented that “[t]he goal of my law school is to turn out the smooth, polished model of the financially oriented corporate interest lawyer—solely to service the business interest and image—a myopic ‘dedicated’ legal automaton who will preserve the power of the

76. Based on a total of 195 responses.

77. Based on a total of 193 responses.

few and protect their narrow interests.”

We attempted to discover in our survey student attitudes toward different types of legal practice. Using a 0-100 point scale with five-point intervals ranging from “low prestige” to “high prestige,” we asked our respondents to appraise the prestige of various kinds of practice in the eyes of *most students* at their respective schools.⁷⁸ Our results are set out in Table VII-14:

TABLE VII-14.—*Prestige of fields of specialization or practice: mean values*

Chief litigating lawyer in a very large firm	80.90
Criminal defense in “big cases”	73.19
Negotiating complicated business deals for a very large corporation	72.96
Handling publicized political cases	71.97
Specializing in tax matters in a very large firm	67.37
Handling major environmental impact suits for the plaintiff	67.23
Estate planning for very large estates	66.73
Handling major desegregation suits	65.77
Members of a firm that handles primarily the affairs of small corporations and partnerships	64.38
Handling litigation and drafting contracts for a large labor union	63.75
Handling major class actions seeking benefits for the poor	63.59
Attorney on the staff of the District Attorney’s office	63.19
Trial lawyer for the plaintiff in personal injury suits	62.78
Member of the legal staff for a medium size or regional company	61.67
Doing investigations of government agencies to determine their fulfillment of legal obligations	61.58
Member of the legal staff of a federal regulatory agency	61.56
Handling civil liberties suits	61.08
Solo practitioner, handling mostly criminal defense and personal injury suits	60.79
Self-employed lawyer specializing in the affairs of small independent business people	59.66
Attorney on the staff of the Public Defender’s office	59.32
Solo practitioner in general practice, usually dealing with the affairs of middle income clients	58.90
Domestic relations practice, mostly divorces and custody suits	51.31
Working on the legal staff of a charitable foundation	55.50
Solo practitioner in general practice, primarily dealing with poor clients	49.21

At the bottom of the student prestige list are several of the same specialties that appeared at the bottom of the Chicago lawyers’ list. The results of the top of the lists are mixed. In addition to

78. Specifically, we presented our respondents with the following statement and asked them to respond using our 100-point scale:

Below are some examples of work that practicing lawyers do. Often in professions some kinds of work are regarded as more desirable or prestigious than others. We are interested in knowing the relative prestige or desirability of each of the following according to your judgment of how they are likely to be regarded by most students at your school.

listing the categories selected by Chicago lawyers as being highly prestigious, students included specialties that attract attention or possibly notoriety (criminal defense in "big cases") and that handle publicized political cases. Apparently the media image of the flamboyant lawyer has not altogether worn off. In the aggregate, the student prestige list does not display as clear a hierarchy, with business interests at the top and individual interests at the bottom, as the Chicago lawyers' list displays, but the tendency is perhaps there.⁷⁹

3. *The Pipkin-Stokes-Spangler study*

A recent paper by Pipkin, Stokes, and Spangler argues that during the three years of law school there is a decline in student interest toward public service careers.⁸⁰ This conclusion was derived from the fact that the mean value on the public service career scale changed across the three years, with most of the change occurring between the first and second years.⁸¹ By the authors' admission, classifying various career options as "pro public service," "neutral," or "little social concern" provided only a "rough scale of 'social concern' and idealism." Although the assignment of types of practice to one of the three classifications is somewhat subjective, it is generally consistent with Laumann and Heinz's rankings of legal specialties.⁸² The authors

79. The associations between years of law school study and prestige rankings are quite weak. Only in a few instances are they statistically significant (*e.g.*, federal regulatory agency, district attorney's office, and civil liberties suits). The prestige of the work in the district attorney's office and of civil liberties suits declines slightly across the three years. The prestige of work in a federal regulatory agency increases slightly.

80. R. Pipkin, R. Stokes, & E. Spangler, note 4 *supra*. This study was based on the same sample as the ABF-Pipkin study. Pipkin, note 30 *supra*.

81. The public service career scale involved a simple ranking of each student's first choice for type of practice. A low value on the scale indicated a tendency in *favor* of public service careers. The results were as follows:

<u>School year</u>	<u>Nonelite school</u>	<u>Elite school</u>
First	46.2	51.5
Second	59.2	62.3
Third	62.7	71.5

See R. Pipkin, R. Stokes, & E. Spangler, *supra* note 4, at 24.

82. The options were as follows:

- Ranked as Zero [pro public service]
 - Criminal Law (Defense)
 - Poverty Law
 - Juvenile Law
 - Public Interest Law
 - Labor Relations

make the following interpretation of their results:

Our findings clearly show a progressive rejection of public service career specialties as students move through law school. A number of reasons, extrinsic and intrinsic to law school, can be posited to explain this loss of idealism. As extrinsic reasons, we would cite the greater financial rewards of business-oriented law practice which may seduce debt-weary students; preparation for the inevitable bar examination, with its emphasis on a model of traditional legal practice; and perhaps a pragmatic assessment of the employment market. . . .

More subtle and interesting, however, is the role of law school culture and legal education in the attrition of students' public service commitments.⁸³

The study argues that traditional law school curricula reflected a preoccupation with business, although that status may have changed in the late 1960's. The authors further claim that "[l]aw schools propound their own heirarchy [sic] of intellectual values whereby law work which is intellectually difficult and challenging is held in higher regard than work which is routine and less role-oriented."⁸⁴ This observation recalls the finding made by Laumann and Heinz in their analysis of Chicago attorneys that higher prestige specialties tend to be ranked as ones of greater intellectual difficulty.⁸⁵ The point also relates to our earlier argument that law faculty tend to support legal education that is theoretically oriented because of its higher-order intellectual demands.

Ranked as Fifty [neutral]

Criminal Law (Prosecution)

Administrative Law

Family Law

Teach Law

Judiciary

Politics

Ranked as One Hundred ["little social concern"]

General Practice (Corporate or Wealthy Clients)

General Practice (Small business and middle income individuals)

House Counsel for corporation

Probate and Estate

International Law

Tax Law

Business

Id. at 28.

83. *Id.* at 17.

84. *Id.* at 18.

85. Laumann & Heinz, *supra* note 14, at 166-67 (Table 1).

The Pipkin-Stokes-Spangler study finds that participation in part-time work or clinical programs "decrease[s] or eliminate[s] the drift away from public service career preferences."⁸⁶ The exception was at elite schools where students who did volunteer legal services experienced an "accelerated shift away from public service interests."⁸⁷ The exception is puzzling. Ignoring that finding one would be tempted to conclude that exposure to practical legal experience might serve as a counter-vailing influence to the business orientation of the traditional law school curriculum. The fact that the exception occurs at elite schools suggests that contact with live underprivileged clients sends some of the students scurrying back to the safety of academia and elite practice.

4. *The Erlanger-Klegon study*

A recent panel study undertaken by Erlanger and Klegon⁸⁸ reaches conclusions somewhat different from those of the Pipkin-Stokes-Spangler study. Erlanger and Klegon surveyed the second-year class at the University of Wisconsin-Madison Law School by a mail questionnaire administered shortly before the beginning of the students' first year of law school (T_1) and again in the spring semester of 1976 (T_2) during their second year. At the outset of their legal education, the respondents tended to agree with pro-public interest statements and to disagree with pro-business statements.⁸⁹ Between T_1 and T_2 the students apparently experienced relatively little change in their attitudes.⁹⁰

The Wisconsin students were also asked to rate twenty-four types of legal work by the extent to which they required the

86. R. Pipkin, R. Stokes, & E. Spangler, *supra* note 4, at 19.

87. *Id.*

88. H. Erlanger & D. Klegon, note 53 *supra*. A panel study is one in which the same respondents are questioned across time, as, for example, in questioning a group of law students in their first, second, and third years of study. Cross-sectional studies attempt to sample from the first-, second-, and third-year classes at one time and to infer change across time from the differences found.

89. A five-point scale was used (five being strong agreement and one being strong disagreement). The pro-public interest statement receiving the greatest agreement was: "Lawyers should be trend setters in working toward social change." (Mean=4.22 at T_1 .) The pro-business statement receiving the *least* agreement was: "It is the complexities of the corporate structure that create the most important work for the lawyer." (Mean=2.13 at T_1 .) *Id.* at Table 2.

90. Over 80% of the Wisconsin students were left of center politically. Their political orientations were significantly associated with their attitudes on public service and business. Between T_1 and T_2 there was some slight political change in a conservative direction. *Id.* at 11-13.

“special skills of a lawyer.”⁹¹ There was little coalescence of viewpoint from T₁ to T₂. Overall, students tended to regard litigation roles as the ones most demanding of a lawyer’s skills. There was some slight decline in this orientation from T₁ to T₂, but much less than one might expect given almost two years of law school and the nature of contemporary legal practice. Despite that general pattern, the two items receiving the greatest increase from T₁ to T₂ were specialization on tax matters in large firms and estate planning for large estates.⁹² These two items were toward the top of our list of prestigious forms of practice in Table VII-14. The items sustaining the greatest decrease in ratings from T₁ to T₂ had to do with political trials (the item was identified with William Kunstler) and investigations of government agencies (the item was associated with Ralph Nader).⁹³ From informal interviews with students, Erlanger and Klegon found that students tended to appraise types of legal work in accordance with how closely the work corresponds to the traditional lawyer’s role as a careful professional representing clients. Generally, however, the representation of less prestigious clients did not markedly reduce the students’ estimates of types of legal work, and the change from T₁ to T₂ was modest.

Erlanger and Klegon also report that there was a marked increase from T₁ to T₂ in the number of students reporting that the opportunity to do pro bono work will *not* be a factor in their job choices. More than one-third of the students, however, persisted in an interest in public interest law careers.⁹⁴

Finally, Erlanger and Klegon administered a question, much like the one we used in obtaining the data compiled in Table VII-8, concerning the prospective desirability of various work settings. The one difference between the two questions was that Erlanger and Klegon asked about the desirability of work settings five years after graduation, while we asked about desirability “during most of your career.”⁹⁵ The results nonetheless are remarkably alike. Erlanger and Klegon’s respondents distinctly preferred work in a small partnership or small firm and least

91. A nine-point scale was used (one being the lowest and nine being the highest). *Id.* at 15.

92. *Id.* at Table 3.

93. *Id.*

94. *Id.* at 19-20.

95. In addition, Erlanger and Klegon used three response categories (“desirable,” “acceptable,” and “unacceptable”), *id.* at Table 7, while we used four categories (“highly acceptable,” “moderately acceptable,” “minimally acceptable,” and “not acceptable”).

preferred work in a large firm; students also chose the small partnership or firm as the desirable work setting and ranked only nonlaw jobs as less desirable than working in a large firm.

Erlanger and Klegon conclude that only modest attitudinal changes occur during law school; they argue that market forces, in the employment of law graduates and in the demand for legal services, may have more to do with practice preferences than does the law school as an agent of socialization. Erlanger and Klegon note appropriately that they studied only one law school at one time, and it may be that students at Wisconsin have a greater commitment to public service than do students at some other schools. Should that be the case, the commitments of these students would help them in resisting law school socialization toward business practice, if that in fact occurs. Nevertheless, the assertion that law schools mold their students for business-oriented practice is somewhat challenged by their results. We suspect that, as more research is done, the often simplistic and polemical assertions about the law school's role in the professional socialization of attorneys will be further questioned. Judging from research in other areas, social reality is usually more complex than our intuitions suggest.⁹⁶

C. *Some Conclusions and Hypotheses*

The support for more practical training in law school—stemming primarily from students and indirectly from judges and practitioners—is substantial. Moreover, the infusion of new roles and perspectives for law faculty is likely, in the long run, also to be supportive of practicality. The desire for practical training by law students and lawyers is understandable and in a certain sense difficult to fault. Anyone pursuing professional

96. One more relatively recent study should be noted. Rita J. Simon, Frank Koziol, and Nancy Joslyn studied graduates from the University of Chicago and University of Illinois Law Schools from the 1950's and 1960's and found:

What does seem clear is that, for whatever the reasons, there have not been widespread shifts in career choices among law graduates in the 1960's. Furthermore, when shifts have occurred, it has not been the top ranking graduates of the more prestigious law schools that have monopolized the "public interest" jobs. If anything, our data show that these respondents, *i.e.*, those who graduated in the top 20 percent of their classes, were more likely, in the sixties, to seek conventional legal careers in large law firms than were their counterparts in the fifties.

Simon, Koziol, & Joslyn, *Have There Been Significant Changes in the Career Aspirations and Occupational Choices of Law School Graduates in the 1960's?*, 8 *LAW & Soc'y REV.* 95, 107 (1973).

training with the aim of entering practice has a just and legitimate claim to adequate preparation. It would be unthinkable, for example, to accept a curriculum with only theoretical training for physicians. But despite the tension between practitioners and teachers that seems to characterize much professional training, medical education has made provision for substantial clinical training.

In another sense, however, the desire for practical training may have unfortunate byproducts in that it may imply the rejection of courses like jurisprudence, professional ethics, and other horizon-broadening subjects. If bread-and-butter courses are defined as the "good" of legal education, must other courses be discarded as impractical or irrelevant? That outcome is obviously not a probable one at present, but such an extreme is at least conceivable.

A defense by traditional legal educators of theoretical training misses the mark if it only defends an isolated theoretical approach to law. The solution—and the problem—is to make theory and other non-bread-and-butter knowledge useful. A successful defense of such courses requires a showing of how the insights these courses provide will help law students achieve their professional goals. The chief difficulty in attaining this objective is that the aggregate utility for society in having liberally educated lawyers may not be readily translatable into personal utility for individual law students.

Traditional legal educators also face the charge that the current practical-theoretical mix in most law school curricula biases many students toward certain forms of practice and away from others. Although the evidence of whether legal education in fact contributes to this end is inconclusive, there are enough indications to raise thoughtful questions about the fair delivery of competent legal services and to warrant further research. If the "best and brightest" lawyers eventually come in significant numbers to prefer business practice over other alternatives, then legal educators must be concerned about the part they may play in that outcome.

In fairness, however, it must be noted that a number of other factors may be primarily responsible for an apparent bias in most law students. It is possible that students who choose legal careers tend already to hold pro-business and non-pro bono attitudes. The socioeconomic backgrounds of prelaw and law students often tend to sustain such attitudes. It may be that the admission practices of law schools tend to select students who eventually prefer to enter a business-oriented practice. It may also be that

market factors have more to do with practice preferences than do the subjective factors contributed by law schools. Law school is only one channel by which the prestige and rewards within the hierarchy of legal practice can be communicated to prospective and fledgling lawyers—it certainly is not the only channel.

Of course, it may be the case that law school as a socialization agent with a certain practical-theoretical curricular mix is a prime culprit in the biasing of student attitudes toward the practice of law. Law schools may send explicit or implicit messages to their students about the prestige, financial returns, and intellectual challenge of various forms of practice. To some extent this assertion presupposes a group of docile and willing listeners, but law schools do have at their command a variety of means for defining and reinforcing success and prestige even when dealing with thoughtful students. Class standings (where they are still used), law reviews, moot court competitions, and other similar devices serve to identify the high achievers among the student body. Once identification occurs, the transition from elite status among students to an elite position in the legal profession is a likely outcome for many students. How many, after all, withstand the blandishments and allures of prestige?

It is unclear whether law schools have been able to balance the political influences of legal educators, judges, practitioners, and students to reach the ideal position on the practical-theoretical continuum. It is also unclear whether law schools' positions on that continuum have produced graduates with disturbingly similar practice tendencies. What is clearer, at least in our judgment, is the type of end product law schools should attempt to graduate in order to best serve society. Society needs humane lawyers with a sense of history and an eye to the future, able to use the knowledge of other disciplines, sensitive to their own limitations as lawyers, profoundly aware of ethical questions and standards, and constantly alert to the consequences of their actions. That is surely a consummation "devoutly to be desired," easy to express, but difficult to achieve.

SECTION VIII

CONCLUSION: PROBLEMS WITH THE IMPLEMENTATION AND PERSISTENCE OF EDUCATIONAL INNOVATION

Our discussion in the preceding Section of the tension between practical and theoretical orientations suggests that major reform in legal education is an exceedingly difficult undertaking and, in the short run, is unlikely to occur. In some respects, this circumstance may not be unfortunate. As suggested in our review of English legal education, it may be that American legal education already represents a judicious balance between the practical and the theoretical. But in light of the substantial interests in practicality expressed by many students, practicing attorneys, and judges, our conclusion that large-scale change is difficult if not improbable may seem surprising and, from the point of view of reformers, unduly pessimistic. We doubt, however, that those who have actually been working in law schools during the past decade will be surprised by this conclusion.

In the course of our visits to ten American law schools, for example, we were struck with our respondents' descriptions of a common pattern. Whether we discussed a new structure for legal education, a new curriculum, a clinical program, or even an innovative teaching approach, our conversations often turned to the difficulties of implementing and perpetuating innovations in law schools. No doubt we sometimes helped turn conversations with students and faculty in that direction, but even a slight stimulus produced willing responses. As most legal educators are probably aware, the preservation of the status quo, punctuated with only modest incremental changes, is not an inevitable outcome; but major reform, should that be desirable, depends upon factors other than the voice of reason.

In this brief concluding Section, we hope to highlight some of the difficulties involved in achieving change in American legal education. By design, our discussion will not be heavily footnoted nor comprehensive. After an admittedly over-simplified description of the different stages in the innovative process and an accounting of the assumptions underlying our functional analysis methodology, we outline the factors associated with the persistence or decline of educational innovation. Finally, we analyze clinical legal education—perhaps the most dramatic and controversial innovation in legal education to have recently emerged—against the backdrop of these factors to perceive the likelihood of the persistence or demise of this educational innovation.

A. *Stages in the Innovative Process*

1. *Stage one: Development and dissemination of innovative ideas*

As a reading of Section VI establishes, there has been no dearth of new programs in and models for American legal education. Judging from the quantity of proposals, new educational ideas must be fairly easy to generate, although few of the proposals are ever implemented. Indeed, proposed reforms of legal education seem to come in cycles like locusts or economic recessions. It is likely that we are presently in the midst of a high point in such a cycle. Section IV's brief historical review of efforts to reform English legal education indicates that we are not alone in cyclical patterns. Some reforms and innovations, however, are put into effect. Many of the changes, such as the introduction of a new course into a curriculum, are limited and idiosyncratic efforts of individual schools, but some changes are more far reaching and are potentially adaptable to other law school settings.

The incidence of proposals for new courses and programs reported in the *Journal of Legal Education* and similar publications is high. Less frequent but yet plentiful are more comprehensive reports like those of Carrington or Packer and Ehrlich.¹ The developing and reporting of innovations does not seem to present a substantial difficulty. Decisions to implement them, however, are another matter.

2. *Stage two: Implementation of innovative ideas by others*

Since there is little research on the subject, the process by which law schools adopt a particular innovation remains something of a mystery. The most important factor may be the prestige of the initial innovating school or of the innovator, coupled perhaps with being the first with an idea at a time of widely perceived need for change. Langdell's efforts, for example, fit both criteria. He tried his innovative ideas at Harvard rather than at a less prestigious institution and was first with those ideas at a time when there were few, if any, viable alternatives.

1. CURRICULUM STUDY PROJECT COMMITTEE, ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971 (P. Carrington ed. 1971); H. PACKER & T. EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION (1972). Packer and Ehrlich also reprinted the Carrington report in their volume.

3. *Stage three: After implementation—persist or perish?*

The endurance of Langdellian methods is the archetype of successful and persistent innovation. There is no single equivalent example of failure, for the competition for that distinction would be keen and crowded. Why do some innovations endure while others wither? Although, ideally, implemented innovations would undergo intensive and rigorous evaluation of their consequences and efficacy to decide if the implemented changes should be retained or rejected, this ideal is seldom achieved. It may be that some innovations are well suited to their purpose while others are not. That proposition, however, presumes careful evaluation of the innovations and rational decisionmaking, and many aspects of human behavior persist without either. The balance of this Section discusses possible reasons for the persistence or decline of educational innovation.

B. Definition of Functional Analysis and Description of Underlying Assumptions

Our approach first examines the totality of consequences of certain innovations and then compares the results of those innovations to the consequences of traditional educational practices. From a social science perspective, the study of consequences is associated with functional analysis. The term "function" has many shades of meaning. In this context we use the term in one of its conventional social science senses to refer to the observable objective consequences of some aspect of social reality.² Functional analysis proceeds by asking: What are the consequences of *A*? What does *A* contribute to the good (or detriment) of society or to the human participants involved? The assumption of functional analysis is that *A* will persist *if* it serves to fulfill other social needs, including the individual needs of human participants. *A* will perish if it serves no such needs. *A* may also perish if there is a better, less costly, or easier known way of fulfilling the same needs. Functional analysis requires the study of *manifest* functions (recognized and intended purposes and consequences) and of *latent* functions (unobtrusive and unintended purposes and consequences).³ As we use the term here, functional analysis is merely a set of assumptions, categories, and questions for the analysis of social reality.

2. R. MERTON, ON THEORETICAL SOCIOLOGY: FIVE ESSAYS OLD AND NEW 78 (1967).

3. *Id.* at 105. See also Flanigan & Fogelman, *Functional Analysis*, in CONTEMPORARY POLITICAL ANALYSIS 72 (J. Charlesworth ed. 1967).

Our assumptions are based on certain general characteristics of human behavior. We assume that people's behavior is governed to a considerable extent by positive and negative reinforcements. Positive reinforcements are rewards like money, prestige, recognitions, honors, and other expressions of approval. Negative reinforcements are punishments, sanctions, or, ultimately, coercion. In the long run, people obviously seek positive, and attempt to avoid negative, reinforcements. We also assume that the notion of entropy from thermodynamics can be applied to human behavior.⁴ Thus, we assume that human actions require energy and effort and that a state of disorder or disorganization is the simplest and easiest condition. When human efforts are removed from a social institution, decay and an ultimate state of disorder are inevitable.

Two relatively small associations of individuals, a law fraternity and a law review organization, serve as examples of these notions. It takes energy and effort to keep both associations in existence. Individuals expend their energies to keep the associations going as long as they receive positive reinforcements from their efforts or are threatened by negative reinforcements should the associations fail. Especially on the side of positive reinforcement we observe the equivalent of a "function" as we have used the term. A law fraternity or a law review organization presumably will continue to thrive as long as it *functions* to fulfill the needs of (positively reinforce) its members. When our student respondents were asked to select the least important nontraditional classroom activity from a list of six possibilities, 55.7% of them chose legal fraternities as the least important.⁵ When asked to explain the reasons for their choice, the typical response was that law fraternities serve no useful purpose, other than a quite modest one of sponsoring social functions.⁶ By contrast, when students were asked to select the most important activity from

4. We apply the concept of entropy to human behavior much as Norbert Wiener has done in his work on cybernetics. See N. WIENER, *THE HUMAN USE OF HUMAN BEINGS* (1954); N. WIENER, *CYBERNETICS* (2d ed. 1961).

5. Of our 202 respondents, 176 selected items from our list of six items (appellate moot court, trial practice court, student bar work, law review, legal clinic, and law fraternity activities). Most of the other respondents suggested other items as the least important activity. The second item on the selection of the least important activity was student bar work (27.2%).

6. According to functional analysis, if no purpose at all is being served, the organization would perish. From time to time some law fraternity chapters no doubt do perish. Those that continue may be of limited importance. As reasons for recognizing some importance of law fraternities, students cited social purpose, the need to have some activity on students' resumes, and the prospects of employment through contact with alumni.

the same list of six, 50.9% selected the law review, citing as their primary reason the traditional link between law review membership and enhanced prospects for desirable job placement.⁷ Given these differential assessments of positive reinforcements, it is difficult to doubt that the energy expended by law students for membership and activity on law reviews greatly exceeds that expended for law fraternities.

Thus, as these two examples illustrate, we assume that the greatest energy will be expended when the reinforcements are the most satisfying and that the least energy will be expended when the payoffs are minimal or nonexistent. A natural corollary to this notion is the idea that the levels of energy and effort expended will depend not only on the mere existence of positive or negative reinforcement, but also on how much one values the achievement of a particular positive reinforcement or fears the administration of a sanction. We also assume that in the long run, especially under the pressures of time and conflicting demands, people will attempt to conserve the energy they expend. They will thus seek to attain payoffs and avoid sanctions with the least possible effort.

We obviously do not presume that the discussion above represents a total view of human behavior, but only of certain salient aspects. Certainly some people do things for the pure intrinsic pleasures of the particular tasks undertaken, although that is also a form of reinforcement. Similarly, some other people occasionally expend enormous amounts of time and energy on tasks with only minimal visible rewards, perhaps because of an intense moral or ethical commitment to the achievement of a certain goal. The point is that most people in the majority of instances do not follow such behavioral patterns. If one were involved in the creation of a social institution, for example, and if one had a choice between the creation of a system of rewards and sanctions designed to encourage the achievement of institutional goals or reliance on the goodwill, motivation, and commitment of staff members, it is quite clear which aspect of human behavior would be more dependable in the long run.

C. *An Analysis of Factors for Change or Stability in American Legal Education*

Our assumptions about human behavior can readily be ap-

7. The second most important activity was the legal clinic (24.2%), and the most frequently cited reason for its importance was the practical training it provides.

plied to an analysis of the persistence or decline of educational programs and practices. To illustrate this application, we dichotomize factors into two groups.

1. *Factors associated with the persistence of educational programs and practices*

An educational program or practice will be more likely to persist than decline if it can accurately be described by the following statements:

a. *The program or practice is at least minimally successful in conveying essential ideas and skills to students.* The statement seems obvious, but the key is that most educational programs and practices are allowed to be only *minimally* instead of maximally effective under the circumstances. Minimum performance is a likely outcome when there are a number of needs to be met in the legal education community *other than* the needs of students in classes.

b. *The program or practice is less costly than other alternatives.* With scarce resources, a less costly program or practice allows a greater diversion of resources to meet other needs of the institution or of individuals within the institution.

c. *The program or practice is relatively easy to administer and apply.* Those programs and practices that lead readily to the development of manageable routines and educational materials save time and energy.

d. *The program or practice is congruent with the overall structure and system of the institution and integrates easily with legal tradition and habits.*

e. *The program or practice positively reinforces administrators, teachers, and, to some extent, students who are involved in the program or practice.* The incentive structure of the law school serves to facilitate some programs and practices and to apply sanctions against others.

2. *Factors associated with the decline of educational programs and practices*

The factors that are characteristic of an educational program or practice that is likely to be filtered out of the institution are substantially the opposite of the factors indicative of persistence listed above. An unsuccessful program or practice can be described by the following statements:

a. *The program or practice is relatively costly, especially when the expenditure of resources, proportionate to students, is*

made in ways that are visibly more expensive than traditional programs and practices. Visibility is a key. Certain traditional programs and practices may also be relatively costly, but if they have found a long-standing, secure place in the law school budget, they are less susceptible to challenge than are highly visible innovations.

b. The program or practice requires a high level of time and energy to be sustained. New programs lack established routines and methodologies that save time and labor, and certain programs may be less susceptible to routines than others because they involve a large number of nonrepetitive tasks. Educational practices that demand recurrent, day-to-day, and proximate interactions between faculty members and individual students require a significantly greater investment of time and energy than do alternatives such as the traditional large class setting.

c. The implementation of the program or practice requires substantial institutional adaptation. It is a relatively simple matter to introduce a new, traditionally taught course into a curriculum. By contrast, it is considerably more difficult to attempt the integration of the unpredictable demands of clinical experiences into a tightly ordered law school curriculum.⁸

d. The program or practice is not consistent with the present incentive system of the law school. Certain innovations are likely to be subject to considerable disincentives, being perceived as low-status tasks not equivalent to the "higher-order" tasks of the traditional institution.

3. *Summary and qualification*

The general thrust of our argument is that educational programs and practices that simply do a better job of instruction will not necessarily thrive. In order to predict the likely persistence or decline of educational innovations, it is necessary to take into account a complex network of consequences.

The propositions above are devoid of authoritative citations to sustain them. More importantly, they are lacking in solid empirical research to demonstrate their validity and are also flawed by generality. The propositions are therefore only our hypotheses, derived from our visits to ten American law schools and from our reading and thinking for the past two years. But the propositions are "working hypotheses" that provide a useful and interesting

8. See, e.g., the discussion of Antioch School of Law, Section VI, notes 86-108 and accompanying text *supra*.

tool to evaluate the prospects for the persistence of perhaps the most important curricular innovation in law schools in recent years: clinical legal education.

D. Clinical Legal Education: A Hypothetical Case

As discussed in Section VI,⁹ proponents of clinical legal education argue that clinical training, by using supervised work with real clients in real life experiences, fulfills the needs of students for practical training better than a traditional curriculum. Medical education has recognized the need for practical training for some time,¹⁰ and the case for clinical legal education seems equally persuasive. Proponents claim that certain skills such as counseling, negotiating, and interviewing can best be learned in nontraditional settings such as clinics, simulations, and computer-assisted instruction. Proponents also argue that the ethical dilemmas of attorneys can best be appreciated and understood in clinical settings, especially in view of the normally pious platitudes of traditional classroom instruction in professional responsibility and the customary absence of meaningful student involvement with ethical questions in that setting.

It is not necessary to debate the validity of pro-clinical positions here; we cite the arguments only for the purpose of introducing our hypothetical case. Even assuming the claimed advantages of clinical legal education to be valid, an analysis of factors associated with the persistence or decline of educational programs is by no means complete. Other aspects and effects of clinical instruction must be examined in order to evaluate the probable future of clinical legal education.

1. The problems and disincentives of clinical legal education

Clinical teaching is usually more costly than traditional large class instruction, although perhaps not substantially more expensive than the total costs for the number of small, highly specialized seminars that are a significant part of many law schools' curricula. Small seminars, however, have low visibility relative to legal clinics. Such seminars are also congruent with the traditional setting and system of law schools, and the tasks of teaching seminars are entirely consistent with the traditional role of the law school professor.

9. Section VI, notes 175-93 and accompanying text *supra*.

10. See generally Section V, notes 100-42 and accompanying text *supra*.

Clinical teaching is exceptionally hard work. The nature of the work itself—direct supervision of novices as they learn how to process cases from beginning to end—demands constant close attention from the clinical instructor lest a client be ill served or a student make some irredeemable blunder. One clinical instructor described his day as beginning with a group of students waiting outside his office for his arrival and as ending with students following him to his car before his departure. In between are the countless small crises—the phone calls, the cases about to go to trial and then not going to trial after all, the questions, the fears, and the frustrations inherent in the learning of complex new tasks.

For the beginning clinical teacher there may be a dearth of routines and materials that could simplify his task. Office manuals, student practice manuals adapted to local usage, standardized local forms, and files of briefs, motions, and pleadings may all need to be developed. This difficulty may be surmounted in time, but even the maintenance of such aids requires attention and supervision.

The routines of clinical education must be adapted to a generally structured law school setting with which the legal clinic is largely incongruent. It is difficult for students to attend highly structured traditional classes and attend to their clients and dockets as well. It is difficult for clinical faculty to adapt the supervision of clinic dockets to the committee meetings and administrative responsibilities that are an inevitable part of the life of a faculty member. Medical education solves a similar problem by the chronological separation of classroom and clinical instruction. In law school, clinical semesters sometimes serve as a surrogate for this chronological separation, but this has not proved to be a total solution.

Law schools often impose overt disincentives on clinical teachers. Promotion and tenure criteria that require the publication of scholarly research are more easily fulfilled by traditional faculty than by clinicians. For some clinicians, "publishing" in the traditional sense has proved to be an impossible task. In the course of our interviews, we talked with one clinician who had recently surrendered faculty status and accepted a nontenure track position so as to avoid the virtually inevitable fate of "publish or perish." This pressure on the clinical instructor to conform to traditional promotion and tenure criteria despite a nontraditional workload suggests a second disincentive on clini-

cal teaching: the "pecking order" in some law schools places traditional legal scholars at the top and clinicians at the bottom (if they are in the pecking order at all). The clinician can avoid the pecking order, of course, by accepting permanent second-class status—by becoming a staff member rather than a member of the faculty. Some law schools encourage and perpetuate second-class status by hiring as clinicians mostly recent graduates at modest pay. The schools' expectations presumably are that such clinicians will spend a year or so supervising clinical activities until "something better" comes along. By rotating such clinicians in and out, law schools reduce costs and need not cope with tenure and promotion issues.

Finally, all of the factors described above commonly combine to make clinical faculty "insurgents" in their own law schools. The amount of time spent by a clinic director in negotiating with the dean or the traditionalists on the faculty imposes still another burden on an already ponderous workload. Successful clinic directors are usually astute politicians and diplomats. Unsuccessful clinicians escape to less demanding positions.

An apt phrase describes the frequent experience and destiny of clinicians: the "burn-out factor." Typically, clinicians can get by on their own motivation and commitment to the purposes of clinical education for a few years. Eventually, the problems and disincentives described above contribute to a state of enervation; clinicians "burn out" and become exhausted with their workload, with the absence of positive reinforcements, and with their battles against deans and faculty. The result is that burned-out clinicians go on to "better things" at higher pay. This is not an outcome without exceptions, of course, but we did talk with several clinicians in our visits who were in the process of burning out.

2. *Traditional classroom teaching: An easier alternative*

By contrast, let us briefly consider the demands of traditional classroom teaching. In view of the pedagogy of the traditional classroom in which the casebook is the principal teaching tool, it makes little difference whether the precise method is markedly Socratic or chiefly lecture—the casebook tends to structure the course and *may* act as a guide to class preparation and study for the teacher as well as the student. In short, traditional classroom teaching is, relative to clinical instruction, *easier for the teacher*. This assertion is not meant to be an outrageous or especially provocative statement. Both of us have taught with

casebooks. Occasionally we have spent many hours in preparation for a single hour of class, but we knew that we could "get by" if necessary by a close reading of the casebook just before class. We knew that, if we chose to, we could simply follow the course set by the casebook editor. In short, casebook instruction in the traditional classroom can be, although it need not always be, a labor-saving method. In our judgment the casebook and traditional classroom teaching fulfill the needs of faculty, if not always the needs of students, very well indeed.

Traditional classroom teaching is compatible with a traditional academic role. Contact hours between faculty and students are usually much fewer than in clinical teaching, and nonclassroom time can be devoted to a research schedule that will not be interrupted by insistent appointments with students, clients, or courts. Because there is more time for research, traditional faculty are distinctly advantaged, relative to clinicians, in meeting the research and publication criteria for promotion and tenure.

3. *Suggestions for the persistence of clinical legal education*

Given the clear incentives for traditional teaching and the disincentives for clinical teaching, it may be surprising that there are any clinical programs at all. The fact that there is a good deal of clinical teaching at present bears witness to the student demand for it, and such student demand suggests that clinical experiences fulfill some of the needs law students perceive as being important. Nonetheless, the problems and disincentives of clinical teaching outlined above must be overcome if clinical teaching is to thrive and grow rather than perish.

One approach to the solution of the problems and disincentives is obvious: simply alter the incentive system of law schools to provide positive reinforcements for clinical programs and clinical teaching. Although this suggestion is admittedly simplistic, because the factors that presently create and maintain disincentives for clinical programs would be equally vigilant and active in any effort to change the incentive structures, the following are some of the rather obvious remedies:

- a. *Workload factors.* Caseloads must be reduced to a manageable level. This situation already exists at a few schools. The obvious difficulty is that reduced workloads increase costs and competition for scarce resources.
- b. *Materials.* Probably the least costly and most productive way in the long run to strengthen the future viability of clinical education is to develop clinical program packages, adaptable to

local usage, that would save the time and labor of clinical faculty. If materials were developed that would do for the clinician what the casebook does for the traditional teacher, the results in reduction of workload would be substantial.

c. *Incentives.* Promotion and tenure policies must be altered to recognize the different, but considerable, contributions of clinicians to the law school. The endowment of clinical chairs and other honorific and remunerative recognitions should be pursued.

d. *Independent sources of funding.* A recognition of the contribution clinics make to the delivery of legal services should establish an entitlement to public funding. There is a danger in this suggestion, however, as clinics might become more case-processing oriented than education oriented. Still, a proper regard for the balance of factors involved could lead to a reasonable funding formula.

E. A Final Comment

Our discussion, using as a background the history of American legal education, the development of English legal education, and the educational experiences of other professions, has served to illustrate the factors and complexities involved in analyzing the prospects for the persistence or decline of educational innovations. Lacking the hard data and research to sustain tight conclusions, we clearly have been engaged in speculation, although hopefully in speculation founded upon experience and reason. It has not been our purpose to serve as the advocates of any particular persuasion on American legal education. We hope that we have stimulated, and occasionally provoked, some thoughtful reactions.

APPENDIX A

Law Faculty Questionnaire

This questionnaire is designed to elicit your views about legal education, law practice and the legal profession. In many instances, it parallels another questionnaire that we are sending to law students. Your responses will be held in strict confidence by us, and not disclosed in any form except, having been aggregated, in a statistical description and analysis of the total responses from a number of law professors.

For each essay-format question below, we will appreciate your most candid views, which can be set forth in the spaces provided. Should you need additional space for an answer, please use the reverse of the page. If you do that, please identify the continuation of your response by noting the number of the relevant question.

For each short answer-format question below, please circle or write-in the number or information that corresponds to your request in the space provided.

Thank you for your participation.

1. Your current position is at _____ law school.
2. What, in your judgment, are the major goals of legal education? (explain briefly)

3. In what ways, if any, are the goals of your current law school different from those of law schools in general?

4. In what ways, if any, would you like for the goals of legal education to be different?

5. In what ways, if any, would you like for the goals of your current law school to be different?

6. A number of commentators have observed that law students' goals and attitudes have changed dramatically during the past decade or so. What are your observations and judgment on this?

7. Explain briefly why you are teaching law, rather than applying your knowledge and skills in some other way.

8. Do you have career goals other than teaching and research? (check one) Yes ____
No _____. If yes, please explain briefly:

9. What aspects of your current position have given you the greatest satisfaction?

10. Which have been the least satisfying?

11. Please rank the importance, *in your judgment*, of student participation in each of the following programs or activities. (NOTE: the item below is called a thermometer scale. It is designed to measure your judgment on a scale of 0 to 100, with the meaning of 0 and 100 being specified as the extremes of the scale. Your judgment can be recorded at any one of the five-point intervals on the scale. Please enter a number for each program or activity in the space provided).

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

No Great
Importance Importance

- 11a. Appellate moot court. Enter # ____
 - 11b. Trial practice court. Enter # ____
 - 11c. Law review. Enter # ____
 - 11d. Student bar work. Enter # ____
 - 11e. Law fraternity activities. Enter # ____
 - 11f. Legal clinic. Enter # ____
 - 11g. Other (identify) ____ Enter # ____
 - 11h. Other (identify) ____ Enter # ____
 - 11i. Other (identify) ____ Enter # ____
12. Now look over the list of activities in 11 above. Which of them do you think is *most* important? _____
Please explain briefly why you think this activity is important:

13. Which of the activities in 11 above do you think is *least* important?

Please explain briefly why you think this activity is unimportant:

14. Below is a list of what might be termed the skills of lawyers. We are interested in knowing to what extent you think a law school *has the responsibility* to see that its students possess each of these skills *upon graduation from law school*. Please read each statement and enter the number on a scale of 0 to 100 that best approximates your view on each.

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

No Great
Responsibility Responsibility

- 14a. Knowledge of substantive legal doctrine and rules. Enter # ____
- 14b. Knowledge of procedural legal doctrine and rules. Enter # ____
- 14c. Ability to "think like a lawyer" (that is, the ability to read cases, handle legal doctrines, and employ the techniques of legal analysis). Enter # ____
- 14d. Proficiency at appellate advocacy. Enter # ____
- 14e. Proficiency at trial advocacy. Enter # ____
- 14f. Proficiency at legal research. Enter # ____
- 14g. Proficiency at legal writing. Enter # ____
- 14h. Knowledge of legal philosophy and theory. Enter # ____
- 14i. Knowledge of legal ethical standards. Enter # ____
- 14j. Ability to negotiate. Enter # ____
- 14k. Ability to investigate the facts of a case. Enter # ____

- 14l. Ability to interview and counsel clients. Enter # _____
- 14m. Knowledge of pertinent information and methods from other disciplines (e.g., accounting, economics, sociology). Enter # _____
15. Which areas of law are of greatest interest to you?
1. _____
 2. _____
 3. _____
 4. _____
 5. _____
16. How many years have you been teaching law? _____ years.
17. Below are some attributes that may affect the chances that a person will be a successful lawyer. In your judgment, how likely is each to affect one's chances? (circle one response for each)

	Very likely to increase success	Possibly increases success	No effect on success	Possibly decreases success	Very likely to decrease success
a. competitive drive.	1	2	3	4	5
b. cynical world view.	1	2	3	4	5
c. commitment to work as the central focus of life.	1	2	3	4	5
d. ability to write a good letter.	1	2	3	4	5
e. high ethical standards.	1	2	3	4	5
f. good personal contacts.	1	2	3	4	5
g. ability to pay attention to detail.	1	2	3	4	5
h. commitment to public service.	1	2	3	4	5
i. ability to research the law.	1	2	3	4	5
j. ability to think on your feet and make articulate responses.	1	2	3	4	5
k. analytic ability.	1	2	3	4	5
l. sociability—a good mixer.	1	2	3	4	5
m. desire to earn a large income.	1	2	3	4	5
n. knowledge of the law.	1	2	3	4	5
o. family and social background.	1	2	3	4	5

18. What changes in legal education between the time of your own legal education and the present seem *especially noteworthy and desirable* to you? Please explain:
19. You graduated from law school in _____.
20. What changes since your graduation seem *noteworthy but undesirable* in some way or another? Please explain:

21. We would appreciate your judgment on the strengths and weaknesses of the following teaching strategies, techniques or settings:
- a. The case method:
 - b. Legal research papers:
 - c. Supervised drafting experiences:
 - d. Simulation:
 - e. Videotape feedback for students:
 - f. Computer assisted instruction:
 - g. Supervised clinical experiences:
 - h. Unsupervised clinical experiences:
 - i. Externships:
 - j. Part-time law-related employment:
22. Below are some examples of work that practicing attorneys do. Often in professions some kinds of work are regarded as more desirable or prestigious than others. We are interested in knowing the relative prestige or desirability of each in your judgment. Enter the number on the scale of 0 to 100 that best approximates your view on each:
- 0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100
- Low High
- Prestige Prestige
- 22a. Member of the legal staff for a medium size or regional company. Enter # ____
 - 22b. Member of the legal staff of a federal regulatory agency. Enter # ____
 - 22c. Handling major environmental impact suits for the plaintiff. Enter # ____
 - 22d. Solo practitioner in general practice, usually dealing with the affairs of middle income clients. Enter # ____

- 22e. Estate planning for very large estates. Enter # _____
- 22f. Doing investigations of government agencies to determine their fulfillment of legal obligations. Enter # _____
- 22g. Attorney on the staff of the District Attorney's Office. Enter # _____
- 22h. Criminal defense in "big cases." Enter # _____
- 22i. Solo practitioner in general practice, primarily dealing with poor clients. Enter # _____
- 22j. Self-employed lawyer specializing in the affairs of small independent business people. Enter # _____
- 22k. Negotiating complicated business deals for very large corporations. Enter # _____
- 22l. Handling major desegregation suits. Enter # _____
- 22m. Specializing in tax matters in a very large firm. Enter # _____
- 22n. Handling major class actions seeking benefits for the poor. Enter # _____
- 22o. Chief litigating lawyer in a very large firm. Enter # _____
- 22p. Working on the legal staff of a charitable foundation. Enter # _____
- 22q. Member of a firm that handles primarily the affairs of small corporations and partnerships. Enter # _____
- 22r. Attorney on the staff of the Public Defender's Office. Enter # _____
- 22s. Handling civil liberties suits. Enter # _____
- 22t. Domestic relations practice, mostly divorces and custody suits. Enter # _____
- 22u. Trial lawyer for the plaintiff in personal injury suits. Enter # _____
- 22v. Handling litigation and drafting contracts for a large labor union. Enter # _____
- 22w. Handling publicized political cases. Enter # _____
- 22x. Solo practitioner, handling mostly criminal defense and personal injury suits. Enter # _____
- 23. In your view, what are the obligations of a law school teacher to instill high professional ethical standards in law students?
 - 23a. How might such standards be instilled; that is, what techniques or methods are likely to be most effective?
- 24. In what ways, if any, has the competition for law school admission affected the attitudes and performance of law students?
- 25. In your view, how important are the following criteria in hiring, retention, promotion and tenure decisions for law faculty?
 - a. Research and publications:
 - b. "Practical" legal experience:
 - c. Demonstrated teaching effectiveness:
 - d. Ability to get along with students:
 - e. Other (identify) _____:
- 26. Should "clinical faculty" be expected to meet the same criteria as "academic faculty"?
- 27. Now, a few questions about your career background. Please check each of the positions you have held, and fill-in the years in each.
 - a. Private practice of law () Years _____.
 - b. Government attorney (all levels) () Years _____.
 - c. Military lawyer () Years _____.

- d. Graduate legal education (beyond J.D.) () Years ____.
 - e. Judicial clerkship () Years ____.
 - f. Judgeship () Years ____.
 - g. Prosecutor () Years ____.
 - h. Public defender () Years ____.
 - i. OEO, legal aid, or legal services attorney () Years ____.
 - j. Intensive trial work (civil) () Years ____.
 - k. Intensive trial work (criminal) () Years ____.
28. Your undergraduate major was _____.
29. Your standing in your class in law school was approximately _____ out of _____ students in your class. Note: if standings were not calculated in this fashion, please explain how they were computed, and give your estimate of your position in your class on that basis:

Any additional comments that you would like to make about law school or the practice of law?

THANK YOU FOR YOUR PATIENCE AND COOPERATION IN COMPLETING THIS QUESTIONNAIRE.

APPENDIX B

Law Student Questionnaire

This questionnaire is designed to elicit your views about legal education, law practice, and the legal profession. Your responses will be held in strict confidence by us, and not disclosed in any form except, having been aggregated, in a statistical description and analysis of the total responses from a number of law students.

For each essay-format question below, we will appreciate your most candid views, which can be set forth in the spaces provided. Should you need additional space for an answer, please use the reverse of the page. If you do that, please identify the continuation of your response by noting the number of the relevant question.

For each short answer-format question below, please circle or write-in the number or information that corresponds to your response in the space provided.

Thank you for your participation.

1. Your law school is: _____.
2. What were your expectations about law school when you applied?
 - 2a. In what ways, if any, has your actual experience been different than what you expected?
3. In your view, what do the major goals of your law school seem to be?
 - 3a. In what ways, if any, would you like them to be different?
4. What aspects of your law school experience have given you the greatest satisfaction?
 - 4a. Which have been the least satisfying?
5. Your current class in law school is (check the appropriate responses)
Day student ____ Evening student ____ 1st yr. ____ 2nd yr. ____ 3rd yr. ____
4th yr. ____
6. In general, how do you feel about law school to date?
(NOTE: the item below is called a thermometer scale. It is designed to measure your feelings on a scale of 0 to 100, with the meaning 0 to 100 being specified as the extremes of the scale. Your feelings can be recorded at any one of the five-point intervals on the scale. The number you choose should represent where you place your feelings on the scale presented. Please enter one number in the space provided.)
0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100
Highly Dissatisfied Highly Satisfied
The number that best represents any feelings about law school to date is _____.

7. Check each of the law school activities in which you have participated during law school to date:

	1st yr.	2nd yr.	3rd yr.	4th yr.
Appellate moot court.	()	()	()	()
Trial practice court.	()	()	()	()
Law review.	()	()	()	()
Legal clinic.	()	()	()	()
Student bar work.	()	()	()	()
Law fraternity activities.	()	()	()	()
Other (Identify) _____.	()	()	()	()
Other (Identify) _____.	()	()	()	()
Other (Identify) _____.	()	()	()	()

8. We would like for you to evaluate the importance of each of the following activities, *not in your personal view*, but according to your perception of *how they are generally viewed by law students at your school*. Again, enter the number for each item on the scale of 0 to 100 that best approximates your answer.

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

No Great
Importance Importance

- 8a. Appellate moot court. Enter # ____
- 8b. Trial practice court. Enter # ____
- 8c. Law review. Enter # ____
- 8d. Legal clinic. Enter # ____
- 8e. Student bar work. Enter # ____
- 8f. Law fraternity activities. Enter # ____
- 8g. Other (Identify) _____, Enter # ____
- 8h. Other (Identify) _____, Enter # ____
- 8i. Other (Identify) _____, Enter # ____

9. Now look over the above list of activities. Which of the above do you think is considered to be the *most* important by students at your law school? (write-in) _____ Please explain briefly why you think students at your school consider this activity to be so important:

10. Which of the activities from the preceding page (question 8) do you think is considered to be the *least* important by students at your law school? _____ Please explain briefly why you think students consider this activity unimportant:

11. Below is a list of what might be termed the skills of lawyers. We are interested in knowing to what extent you think you *will have* each of these skills *upon completing law school*. Please read each statement and enter the number on the scale of 0 to 100 that best approximates your view on each.

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

No Highly
Skill Skilled

- 11a. Knowledge of substantive legal doctrine and rules. Enter # ____
- 11b. Knowledge of procedural legal doctrine and rules. Enter # ____

19. Have your career goals changed since entering law school? (check one)

Yes _____ No _____

19a. If yes, please indicate how they changed, and what, in your judgment, led to these changes:

20. Your undergraduate subject was _____.

21. Below are some reasons that may affect one's decision to enter a profession. We are interested in knowing whether they are (or were) important or unimportant to you. Please read each statement and circle only one response for each:

	No Importance	Little Importance	Some Importance	Great Importance
a. An interest in subject matter.	4	3	2	1
b. A desire for intellectual stimulation.	4	3	2	1
c. Gaining professional expertise useful in solving personal problems.	4	3	2	1
d. A liking for argument and debate.	4	3	2	1
e. Prestige of the profession.	4	3	2	1
f. A desire to help restructure society.	4	3	2	1
g. A desire to handle other peoples' affairs.	4	3	2	1
h. A desire for independence.	4	3	2	1
i. A desire to become a politician.	4	3	2	1
j. A desire to be of service to the underprivileged.	4	3	2	1
k. A desire for varied work.	4	3	2	1
l. A desire to go into business.	4	3	2	1
m. Anticipated enjoyment of the activities of lawyers.	4	3	2	1
n. A desire to become a legal educator.	4	3	2	1
o. A desire to go into government service.	4	3	2	1
p. Financial rewards.	4	3	2	1
q. Family influences.	4	3	2	1
r. A desire for stability and security.	4	3	2	1
s. Opportunity to be helpful to others and/or useful to society in general.	4	3	2	1
t. Other important factor				
_____ (Please specify)	4	3	2	1
v. Other important factor				
_____ (Please specify)	4	3	2	1

22. Now look over the reasons listed in the previous question. Pick out the ones that are the three most important to you:
 Which of these is most important ? (enter letter) ____
 Which of these is second most important ? (enter letter) ____
 Which of these is third most important? (enter letter) ____
23. Think about the job you would most like to have in your career. Please describe this job in terms of type of employment, type of client, type of practice, geographical location, etc.:

23a. What do you think you would especially like about this job?

23b. What, if anything, might you especially dislike about this job?

23c. Do you expect that you will actually ever have this job? Yes ____ No ____
 If no, please indicate why you think not:

24. Disregarding inflation, what do you think your maximum annual earnings will be during your career? \$_____.
25. Do you foresee specializing in any particular area of the law? (check one)
 Definitely yes ____ Don't know ____ Definitely no ____
 Probably yes ____ Probably no ____
26. Again using the 0 to 100 scale, please rate the following areas of law as to whether they would be of interest to you during your legal career. Enter the number for each that best approximates your interest:

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

No Interest Great Interest

- | | |
|---------------------------------------|---|
| 26a. Administrative law. Enter # ____ | 26k. Maritime Law. Enter # ____ |
| 26b. Antitrust. Enter # ____ | 26l. Military Law. Enter # ____ |
| 26c. Bankruptcy. Enter # ____ | 26m. Patent and Copyright Law. Enter # ____ |
| 26d. Constitutional Law. Enter # ____ | 26n. Tax Law. Enter # ____ |
| 26e. Corporate Law. Enter # ____ | 26o. Tort Law. Enter # ____ |
| 26f. Criminal Law. Enter # ____ | 26p. Trusts and Estates. Enter # ____ |
| 26g. Family Law. Enter # ____ | 26q. Poverty Law. Enter # ____ |
| 26h. Insurance Law. Enter # ____ | 26r. Civil Liberties Law. Enter # ____ |
| 26i. International Law. Enter # ____ | 26s. Law reform. Enter # ____ |
| 26j. Labor Law. Enter # ____ | |

27. Which of the areas listed in question 26 is the greatest interest to you?

Please explain briefly why this area is of interest to you:

28. Which of the areas listed in question 26 is of least interest to you?

Please explain briefly why this area is not of interest to you:

29. Please rate the following types of organizations as to whether you think they would be acceptable work settings *for you* during most of your career. Circle one response for each:

	Highly Acceptable	Moderately Acceptable	Minimally Acceptable	Not Acceptable
a. Solo practice.	1	2	3	4
b. Small partnership.	1	2	3	4
c. Small firm (less than 10).	1	2	3	4
d. Medium firm (10 to 40).	1	2	3	4
e. Large firm (more than 40).	1	2	3	4
f. Poverty law office.	1	2	3	4
g. Public interest law office.	1	2	3	4
h. Public defender's office.	1	2	3	4
i. District attorney's office.	1	2	3	4
j. Corporation or bank (house counsel).	1	2	3	4
k. Municipal attorney.	1	2	3	4
l. State agency.	1	2	3	4
m. Federal agency.	1	2	3	4
n. Teaching.	1	2	3	4
o. Judgeship.	1	2	3	4
p. Nonlaw job in general.	1	2	3	4
q. Nonlaw job, government.	1	2	3	4
r. Nonlaw job, business.	1	2	3	4
s. Other acceptable setting	1	2	3	4

(Please identify)				
t. Other acceptable setting	1	2	3	4

(Please identify)				

30. Now look over the list above. Which is the most desirable work setting in your judgment? _____
Please explain briefly why:

31. Which of the above is the least desirable setting? _____
Please explain briefly why:

32. Below are some attributes that may affect the chances that a person will be a successful lawyer. In your judgment, how likely is each to affect one's chances? (Circle one response for each)

	Very likely to increase success	Possibly increases success	No effect on success	Possibly decreases success	Very likely to decrease success
a. competitive drive.	1	2	3	4	5
b. cynical world view.	1	2	3	4	5
c. commitment to work as the central focus of life.	1	2	3	4	5
d. high ethical stan- dards.	1	2	3	4	5
e. ability to write a good letter.	1	2	3	4	5
f. good personal contacts.	1	2	3	4	5
g. ability to pay attention to detail.	1	2	3	4	5
h. commitment to public service.	1	2	3	4	5
i. ability to research the law.	1	2	3	4	5
j. ability to think on your feet and make articulate responses.	1	2	3	4	5
k. analytic ability.	1	2	3	4	5
l. sociability—a good mixer.	1	2	3	4	5
m. desire to earn a large income.	1	2	3	4	5
n. knowledge of the law.	1	2	3	4	5
o. family and social background.	1	2	3	4	5

33. Your current class standing is _____ out of _____ students in your class. Note: if class standings are not computed at your school in this fashion, please explain briefly how they are computed and give your estimate of your position in the class on that basis:

34. Below are some examples of work that practicing lawyers do. Often in professions some kinds of work are regarded as more desirable or prestigious than others. We are interested in knowing the relative prestige or desirability of each of the following according to your judgment of how they are likely to be regarded by most students at your law school. Enter the number on the scale of 0 to 100 that best approximates your view on each:

0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

Low High
Prestige Prestige

- 34a. Member of the legal staff for a medium size or regional company. Enter # _____
- 34b. Member of the legal staff of a federal regulatory agency. Enter # _____
- 34c. Handling major environmental impact suits for the plaintiff. Enter # _____
- 34d. Solo practitioner in general practice, usually dealing with the affairs of middle income clients. Enter # _____

- 34e. Estate planning for very large estates. Enter # ____
- 34f. Doing investigations of government agencies to determine their fulfillment of legal obligations. Enter # ____
- 34g. Attorney on the staff of the District Attorney's Office. Enter # ____
- 34h. Criminal defense in "big cases." Enter # ____
- 34i. Solo practitioner in general practice, primarily dealing with poor clients. Enter # ____
- 34j. Self-employed lawyer specializing in the affairs of small independent business people. Enter # ____
- 34k. Negotiating complicated business deals for a very large corporation. Enter # ____
- 34l. Handling major desegregation suits. Enter # ____
- 34m. Specializing in tax matters in a very large firm. Enter # ____
- 34n. Handling major class actions seeking benefits for the poor. Enter # ____
- 34o. Chief litigating lawyer in a very large firm. Enter # ____
- 34p. Working on the legal staff of a charitable foundation. Enter # ____
- 34q. Member of a firm that handles primarily the affairs of small corporations and partnerships. Enter # ____
- 34r. Attorney on the staff of the Public Defender's Office. Enter # ____
- 34s. Handling civil liberties suits. Enter # ____
- 34t. Domestic relations practice, mostly divorces and custody suits. Enter # ____
- 34u. Trial lawyer for the plaintiff in personal injury suits. Enter # ____
- 34v. Handling litigation and drafting contracts for a large labor union. Enter # ____
- 34w. Handling publicized political cases. Enter # ____
- 34x. Solo practitioner, handling mostly criminal defense and personal injury suits. Enter # ____
35. If you had room for only five elective courses in your three years of law school, what subjects would you choose to take? Please identify the subject area (not necessarily the course title) and explain the reasons for your choice in each instance:

Course 1 _____

Reasons:

Course 2 _____

Reasons:

Course 3 _____

Reasons:

Course 4 _____

Reasons:

Course 5 _____

Reasons:

Any additional comments that you would like to make about law school or the practice of law:

THANK YOU FOR YOUR PATIENCE AND COOPERATION IN COMPLETING THIS QUESTIONNAIRE.