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# An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education

BY DEEDRA BENTHALL-NIETZEL\*

## I. INTRODUCTION

Improving the law school curriculum is a task that has received a great deal of attention in recent years.<sup>1</sup> One result of this has been the attempt to increase the relevancy of legal education through the implementation of "lawyering skills" courses.<sup>2</sup> Thus far, however, efforts to identify skills required by practicing attorneys and to develop courses teaching those skills have been largely inadequate. Legal educators have not made, specifically for purposes of curriculum development, a

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<sup>1</sup> *Curriculum Report Prepared by the School of Law University of South Carolina*, 23 J. LEGAL ED. 528 (1971); Bok, *Prospects for Legal Education*, 1971 ILL. L. FORUM 179; Cohen, *Toward Radical Reform of the Law School Curriculum*, 24 J. LEGAL ED. 210 (1972); Goda, *Curriculum Changes: Philosophy and the Behavioral Sciences Versus a Devil's Advocate*, 22 J. LEGAL ED. 206 (1969); Gross, *On Law School Training in Analytic Skill*, 25 J. LEGAL ED. 261 (1973); Holton, *Outline for an Integrated Law Curriculum*, 24 J. LEGAL ED. 195 (1972); Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7 (1968).

<sup>2</sup> Bellow and Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664 (1971); Grismer and Shaffer, *Experience-Based Teaching Methods in Legal Counseling*, 19 CLEV. ST. L.R. 448 (1970); Gullickson, *Law Students See Lawyers Lawyering*, 43 WIS. B. BULL. 20 (Aug. 1970); Moore and Tomlinson, *The Use of Simulated Negotiation to Teach Substantive Law*, 21 J. LEGAL ED. 579 (1969); White, *The Lawyer as a Negotiator: An Adventure in Understanding and Teaching the Art of Negotiation*, 19 J. LEGAL ED. 337 (1967).

comprehensive study of what lawyers do.<sup>3</sup> In their recent article, Boyer and Crampton remarked that

[e]veryone 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".<sup>4</sup>

Still, legal educators have not been left entirely to their own devices. Some empirical research has been accomplished in the area of curriculum development and skills training. For example, Richard Dunn, a political scientist, surveyed the Illinois Bar in 1968 to determine its attitude toward various types of law school curricula and proposals for curricular change.<sup>5</sup> In general, the practicing lawyers believed that they would have been better prepared for their work, if while in law school they had had more practical experience with legal problems and the courts.<sup>6</sup> They were equally divided on a law school's need to encourage more contact with other academic disciplines and generally felt that additional work in legal theory was not needed. As a result of this survey, Dunn recommended that those responsible for curricular changes should consider incorporating interdisciplinary courses into the curriculum and establishing internship, clerkship or clinical programs.

A survey of graduates of the University of Toledo College of Law likewise sought to determine their evaluation of law school education as preparation for practice.<sup>7</sup> Information per-

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<sup>3</sup> Boyer and Crampton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 270 (1974). This is the first article in the American Bar Foundation's program of studies on legal education.

<sup>4</sup> *Id.*

<sup>5</sup> Dunn, *Legal Education and the Attitudes of Practicing Attorneys*, 22 J. LEGAL ED. 220 (1969).

<sup>6</sup> The alumni surveys conducted at Harvard and Stanford would also suggest a need for additional emphasis on practical training for law students. See Wilson, *Profile of the Alumni*, HARV. L.S. BULL. 5, 16-17 (May 1968); and *Responses to the Board of Visitors Survey of the Stanford Law School Alumni*, STAN. LAWYER (Supp. Spring 1972).

<sup>7</sup> Stern, *Retrospection: What Recent Law School Graduates Think of Their Education*, 17 STUD. LAWYER J. 27 (1972).

taining to the importance of skills training was also obtained. When asked to rank six lawyering skills in order of importance to their practice, respondents placed them as follows: (1) dealing with facts, (2) negotiations, (3) legal planning, (4) advocacy, (5) draftsmanship, and (6) predicting how controversies will be decided. Finally, the Toledo graduates were asked to list in order of importance other special skills, which were developed in practice but not taught in law school. The skills most often cited were dealing with people, people's problems, judges, and court officials. Stern recommended that courses focusing on these skills be added to the curriculum.

A survey of California lawyers was also undertaken to determine the importance of 15 lawyering skills.<sup>8</sup> The skills listed were composed of those taught in law school and tested on bar exams as well as those thought to be important to practicing attorneys but not usually taught in law school. Responses of lawyers in different types of practice were compared as well as the responses of those who had practiced for varying periods of time. "Analyzing cases" was the skill most often listed as "essential to the practice of law." Legal research ranked second. Interpersonal skills such as counseling and interviewing were also highly rated. Schwartz suggested that the data collected might be used profitably by law students, legal educators, practitioners and bar examiners alike in identifying skills important to the successful practice of law.

The importance of interpersonal skills training was also pointed out in research conducted by Stevens between 1969 and 1971.<sup>9</sup> In general, responding law students indicated that none of the eight schools surveyed placed considerable emphasis upon the teaching of communication skills including the ability to counsel and interview clients and the ability to negotiate and arbitrate. Between 25 and 50 percent of the respondents urged that these skills receive "great emphasis" in the

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<sup>8</sup> Schwartz, *The Relative Importance of Skills Used by Attorneys*, 3 GOLDEN GATE L. REV. 321 (1973). The author included many of Schwartz's skill designations in the Kentucky Lawyer Survey Questionnaire.

<sup>9</sup> Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973). Between the years 1969 and 1971, studies were conducted at eight law schools across the country involving the alumni of the class of 1960, the first year class of 1972, and the third year class of 1970. Data was collected by means of the survey method and in-depth interviews.

future.<sup>10</sup> In addition, responses to the Third Year Class of 1970 Questionnaire revealed that 75% of the students placed their curriculum on the theoretical side of a bi-polar theoretical/practical continuum. Yet, students at each school felt that the curriculum should be less theoretical and more practical in nature.<sup>11</sup> Stevens also noted that the responses to the questionnaire indicated a general awareness of the need for training in lawyering skills.

Like each of the above-discussed projects, the present study does not purport to be an exhaustive analysis of "what lawyers do;" it seeks only to expand upon the information already gathered.<sup>12</sup> This study grew out of the work of the Program Development Committee at the University of Kentucky College of Law. At the commencement of the committee's work on long-range curriculum improvement, Dean George Hardy, III, suggested that, as a basis for the committee's work, research be conducted to determine what lawyers actually do in the practice of law. The survey was conducted with a view toward identifying those skills important to the practicing attorney.

The nature of practice among graduates of the University of Kentucky made two groups of practitioners of particular interest to the committee. First, the most recent statistical data published by the American Bar Foundation<sup>13</sup> reveal a high percentage of government attorneys among Kentucky graduates when compared with data on graduates of other law schools as well as with the lawyer population as a whole. In 1970, 22.9% of University of Kentucky graduates were involved in government work,<sup>14</sup> while only 14.3% of the lawyer population as a whole were in government work.<sup>15</sup> The statistics show that the percentage of government lawyers in Kentucky (18%) is also above the national figure.<sup>16</sup> Second, another large segment of University of Kentucky graduates is made up of sole

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<sup>10</sup> *Id.* at 595.

<sup>11</sup> *Id.* at 659-60.

<sup>12</sup> At this writing, the American Bar Foundation is completing a study of the nature and organization of the work of private practitioners.

<sup>13</sup> AMERICAN BAR FOUNDATION, THE 1971 LAWYER STATISTICAL REPORT.

<sup>14</sup> *Id.* at 108.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.* at 50.

practitioners (29.7%).<sup>17</sup> In Kentucky 38.5% of the lawyer population are sole practitioners.<sup>18</sup> Thus, more than half of Kentucky's graduates are government lawyers or sole practitioners. These facts were thought to have significance for curricular development.

The survey method was used to secure the data for the study. In March, 1974, 959 questionnaires (see appendix) were mailed to a random sample of attorneys appearing on the membership mailing list of the Kentucky State Bar Association.<sup>19</sup> Eight-hundred of the survey recipients were in-state Bar members (approximately 20% of the resident Kentucky Bar), and the remaining 159 attorneys were then residing out of state. This group comprised approximately 15% of the non-resident bar members. Each questionnaire was accompanied by an introductory letter from Glenn W. Denham, president of the Kentucky State Bar Association. The questionnaire was five pages in length and consisted of 16 questions pertaining to background information, type of practice, tasks performed, skills used, and methods of supplementing legal skills. Following a single mailing, 416 of the 959 questionnaires (43%) were completed and returned.

The analysis hereinafter presented will begin with a short profile of the respondents regarding the number of years practiced, legal education, type of work, income and size of firm and its location. Then, a breakdown of the ways in which lawyers spend their time, the tasks which they must perform and the skills which they must possess to function efficiently and competently is presented. Finally, there is a discussion of some possible inferences regarding the significance of the results for curriculum planning.

## II. RESULTS AND DISCUSSION

### A. *Background Information*

Approximately 75% of the respondents were graduates of law schools within the Commonwealth of Kentucky. Almost

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<sup>17</sup> *Id.* at 108.

<sup>18</sup> *Id.* at 40. Note that this compares with 36.6% of the lawyer population of the United States as a whole.

<sup>19</sup> See Appendix for a copy of the Kentucky Lawyer Survey Questionnaire.

one-half were graduates of the University of Kentucky College of Law, and approximately 25% were graduates of the University of Louisville School of Law. Two percent were graduates of the Salmon P. Chase College of Law. The remaining attorneys were graduates of various out-of-state schools.

Table I shows the number of years attorneys had spent in practice. A majority of the respondents had practiced 15 years or less. Forty percent had practiced seven years or less.

TABLE 1  
Percent of Respondents by Years in Practice

<u>Years in Practice</u>	<u>Percent of Respondents</u>
3 years or less	22.6%
4 - 7 years	17.5
8 - 15	20.4
16 - 25	18.7
26 - 40	15.8
over 40 years	4.9

Nearly 75% of the total number of respondents as well as 75% of those graduating from the University of Kentucky indicated that they were in private or firm practice. One-third of those in private practice were in sole practice. Again, University of Kentucky graduates reflected the same percentage (see Tables 2 and 3).

TABLE 2  
Percent of Respondents by Type Work

<u>Type Work</u>	<u>Percent of Total Respondents</u>	<u>Percent of University of Kentucky Graduates</u>
Private or firm practice	71.1%	73.7%
Government lawyer	7.5	10.5
Judiciary	2.9	2.6
Corporation lawyer	7.5	5.8
Military lawyer*	.5	1.1
Law teaching**	1.2	.5
Retired	2.2	1.1
Other	7.2	5.3

\* Sample too small to allow meaningful interpretation (military lawyer, N=2).

\*\* Sample too small to allow meaningful interpretation (law teacher, N=5).

Table 3  
Percent of Private Practitioners  
by Size of Practice

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Size of Firm	Percent of Total Respondents	Percent of University of Kentucky Graduates
1	33.7%	33.6%
2	13.7	17.7
3	16.8	17.7
4-10	20.3	19.5
11-15	6.3	5.3
16-25	3.8	2.7
26-50	4.8	3.5
50+	.6	—

The Kentucky survey indicated that 7.5% of the total respondents were in government work, while 10.5% of the University of Kentucky graduates were so employed. The total survey response to the government lawyer category can be increased by another 4% because of the number of attorneys responding to the "other" category who indicated that they were involved in government work. Since the American Bar Foundation figures included the judiciary within the government sector, the Kentucky figures on the judiciary could be included (2.9%). These two additions bring the overall percentage of survey respondents involved in government work to 14.4%. Since the Kentucky sample included bar members practicing outside as well as inside the Commonwealth, the percentage of government lawyers is not as large as that indicated in the American Bar Foundation figure (18%), which pertains only to lawyers practicing within Kentucky.

The Kentucky survey figure relating to the percentage of government lawyers among graduates of the University of Kentucky was substantially lower than that arrived at by the American Bar Foundation (22.9%). However, government work was more prevalent among University of Kentucky graduates than survey respondents on the whole. In the Kentucky study two-thirds of the government attorneys responding to the survey were University of Kentucky graduates. Again, the 10.5% can be increased by the number of Kentucky graduates who checked the "other" category when indicating government work. This accounts for an additional three percent. The addi-



tion of the judiciary category brings the percentage of Kentucky graduates involved in the government sector to 16.1%. One explanation for the lower percentage found in the Kentucky survey is that University of Kentucky graduates living out of state, who are not members of the Kentucky Bar and who are working as government attorneys, were not included in the sample. Regardless of the discrepancy in figures, the present study confirms that a significant group of Kentucky graduates do enter government work.

Tables 4 and 5 include data pertaining to population of the town in which the attorneys worked and the income which they earned. The majority of attorneys practice in towns with populations of 100,000 or more. Nearly one-third earn between \$20,000 and \$35,000 per year.<sup>20</sup> As might be expected, income was shown to be positively related to years in practice, population of city, and size of firm. There was a significant relationship ( $F = 24.10$ ,  $df = 3/339$ ,  $p < .05$ ) between the law school attended and the population of the town in which attorneys work. University of Kentucky graduates tend to practice in smaller towns than graduates of other law schools. There was no statistically significant relationship between the law school attended and the size of firm in which attorneys work, although students from non-Kentucky law schools tend to be employed by larger firms. The larger firms would logically be more aggressive than the smaller ones in recruiting graduates from out-of-state schools. Similarly, there was a non-significant ( $F = 1.96$ ,  $df = 3/394$ ,  $p < .15$ ) trend for students from non-Kentucky law schools to receive larger salaries. This trend would be expected since non-Kentucky graduates tend to practice in larger towns as well as in the larger law firms, and income is positively related to population and size of firm.<sup>21</sup>

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<sup>20</sup> For an earlier survey of income of the Kentucky Bar, see Care, *Survey of the Economics of Law Practice of Kentucky Lawyers 1966*, Aug. 7, 1967 (published by the Kentucky Bar Association).

<sup>21</sup> For other research on Kentucky lawyers, see Goldman, *Lawyer Supply and Demand in Kentucky Over the Next Decade*, 59 Ky. L.J. 189 (1970); Goldman, *Reflections on the Coffman Analysis of Kentucky Lawyer Manpower Needs*, 36 Ky. B.J. 37 (April, 1972); L. Abramson, *Kentucky's Future Needs for Attorneys*, Summer 1974 (Published by the Kentucky Council on Public Higher Education in mimeographed form; to appear in 63 Ky. L.J. No. 2 (1975)).

TABLE 4  
Percent of Respondents by Size of Town  
Where Work

<u>Size of Town</u>	<u>Percent of Total Respondents</u>
under 5,000	11.3%
5,000 - 25,000	18.7
25,000 - 50,000	9.8
50,000 - 100,000	8.8
100,000 - 250,000	10.3
over 250,000	41.0

TABLE 5  
Percent of Respondents by Income Received

<u>Size of Income</u>	<u>Percent of Total Respondents</u>
under \$15,000	19.8%
15,000 - 20,000	19.5
21,000 - 35,000	31.2
36,000 - 50,000	17.3
over 50,000	12.3

### B. *Areas of Practice*

Respondents were engaged in five major areas of practice: personal injury; real estate; wills, trusts and probate; criminal law; and corporation law. Table 6 includes the mean percentage of time spent in various areas of work. The "other" category, which accounted for an average of about 10% of attorneys' time, included patent, trademark, and copyright law; law teaching; administrative law; antitrust law; and environmental law. These areas of practice are typical of those pursued by the general practitioner.

In order to determine the relationship between various kinds of law practices, correlations were calculated between the percentages of time spent in the 14 different areas of practice listed in question 8. The attorneys' practices tended to cluster into two major groupings. Group One included: corporate or corporate finance law; banking and finance law; wills, trusts and probate; real estate transactions; and taxation. Group Two

TABLE 6  
Percentage of Time in  
 Various Areas of Practice

<u>Areas of Practice</u>	<u>Percentage of Time</u>
Corporate and corporate finance law	9.17%
Personal injury law	13.14
Criminal law	10.50
Workmen's compensation	5.08
Banking and finance law	2.31
Collection	3.52
Wills, trusts and probate	11.24
Real estate transactions	12.91
Family law	8.76
Community legal services	1.40
Labor relations	1.41
Taxation	5.86
Bankruptcy	1.77
Other	9.92

included: personal injury law, workmen's compensation, labor relations, and bankruptcy. It might be noted that criminal law practice was not strongly correlated with either list. In fact, a negative relationship existed between criminal law and Group One.

### C. *Tasks, Skills and Law School Subjects*

Tasks requiring the largest amount of respondents' time were drafting documents, interviewing clients, correspondence, library research and orally counseling clients (see Table 7). Correspondence (10% of their time) combined with office administrative and organizational tasks (6.2% of their time) occupied a rather large segment of attorneys' time.

The importance of lawyering skills not traditionally taught in law school is an area in which the Program Development Committee was particularly interested. Much of the data obtained from the question dealing with rating the importance of thirty skills or characteristics was consistent with the committee's hypotheses, but many of the results were not anticipated.

Table 8 contains the ranking in order of importance of skills or characteristics from the total survey response. In Table 9 the top five skills indicated by the total survey response are compared with those of private practitioners, government lawyers and the corporation lawyers.

TABLE 7  
Percentage of Time in Major Lawyer Tasks

<u>Task</u>	<u>Percentage of Time</u>
Library research	9.8%
Preparing legal memoranda	5.9
Brief writing	3.4
Jury trial	4.4
Non-jury trial or hearing	6.1
Motion and appellate argument	1.9
Opinion writing	2.8
Interviewing clients	10.1
Deposition taking	3.3
Other fact investigation	4.1
Other preparation for trial	3.9
Orally counseling clients	9.3
Drafting documents	10.2
Negotiating (including plea bargaining)	3.9
Correspondence	10.0
Office administrative and organizational tasks	6.2
Teaching	1.3
Civic functions	3.3
Other	.2

Knowledge of statutory law subjects, understanding human behavior, organizing facts, self-confidence, and thinking quickly on one's feet achieved the highest rankings from respondents as a whole. Interviewing clients and witnesses and counseling clients were also included among the top 15 skills or characteristics (ranked 13th and 15th respectively). The responses of those in private practice did not differ substantially from the overall response. However, the top five skills and characteristics were arranged in slightly different order. Self-confidence replaced knowledge of statutory law subjects as the most important skill.<sup>22</sup> Interpersonal skills such as counseling and interviewing were rated somewhat higher by the private practitioner (7th and 8th respectively) than by respondents as a whole. Corporation lawyers included quick legal analysis among the top five skills in place of thinking quickly on one's

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<sup>22</sup> The Socratic method has been criticized for being destructive of self-confidence. See Kennedy, *How the Law School Fairs: A Polemic*, 1 *YALE REV. L. & SOCIAL ACTION* 71 (Spring, 1970); Savoy, *Toward a New Politics of Legal Education*, 79 *YALE L.J.* 444, 457-62 (1970).

TABLE 8

Rank Order of Skills and Characteristics in Order of  
Importance to Attorneys' Practice

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Skill	Mean* Score
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
Sense of humor	2.00
Pleasant, engaging personality	2.03
Quick legal analysis	2.03
Analysis and synthesis of laws and decisions	2.07
Persuasive expression under pressure	2.08
Interviewing clients and witnesses	2.08
Personal care and dress	2.11
Counseling clients	2.13
Knowledge of trial and appellate procedure	2.16
Organizing argumentation	2.17
Investigating facts	2.19
Legal writing	2.21
Eliciting facts under adverse confrontation	2.22
Writing or drafting under pressure	2.24
Presenting oral argumentation	2.27
Negotiating	2.31
Presenting written argumentation	2.35
Understanding non-legal problems surrounding client's legal problems	2.37
Knowledge of common law subjects	2.44
Physical endurance	2.54
Knowledge of administrative procedure	2.74
Memorizing facts	2.96
Memorizing legal concepts	3.47

\* Skills were rated on a 5 point scale with 1 = "extremely important to me" and 5 = "not important to me".

feet. Skills involved in counseling and interviewing were not as important to the corporate lawyer as to private practitioners. However, as might be expected, negotiation was considered to be more important to the corporation lawyers (9th) than any of the other three groups.

Government lawyers also rated knowledge of statutory law subjects, organizing facts, and self-confidence among the five

TABLE 9

Rank Order of Most Important Skills or Characteristics Indicated by Total Response, Private Practitioners, Government Lawyers and Corporation Lawyers

<u>Total Responses</u>	<u>Mean Score</u>	<u>Private Practitioners</u>	<u>Mean Score</u>
Knowledge of statutory law subjects	1.67	Self-confidence	1.64
Understanding human behavior	1.71	Understanding human behavior	1.67
Organizing facts	1.71	Knowledge of statutory law	1.73
Self-confidence	1.71	Organizing facts	1.73
Thinking quickly on one's feet	1.82	Thinking quickly on one's feet	1.75
<u>Government Lawyers</u>	<u>Mean Score</u>	<u>Corporation Lawyers</u>	<u>Mean Score</u>
Knowledge of statutory law subjects	1.32	Knowledge of statutory law subjects	1.84
Organizing facts	1.42	Organizing facts	1.84
Analysis and synthesis of laws and decisions	1.55	Understanding human behavior	1.90
Legal research	1.61	Self-confidence	1.94
Self-confidence	1.81	Quick legal analysis	2.03

most important skills or characteristics. In addition, legal research and analysis and synthesis of laws and decisions were included in this group. Government attorneys did not find counseling and interviewing as important in their work as did other groups. These skills were ranked very low at 25th and 26th, respectively. T-tests were used to determine the difference between government lawyers' and private practitioners' ratings of skills and characteristics. Legal research, analysis and synthesis of laws and decisions, organizing facts, and knowledge of administrative procedure were found to be significantly more important for government lawyers than for private practitioners. When compared with government lawyers, private practitioners rated the following as being significantly

more important to their work: persuasive expression under pressure; interviewing; understanding non-legal problems surrounding client's legal problems; counseling; negotiating; and pleasant, engaging personality.<sup>23</sup>

Legal writing skills (legal writing, writing or drafting under pressure, and presenting written argumentation) were ranked among the least important by all groups except government lawyers who placed them within the 15 most important skills. The low level of importance attached to legal writing is difficult to explain in light of the responses to question 9, which indicated that a substantial amount of time (over 30%) was spent in writing tasks: preparing legal memoranda (5.9% of their time); brief writing (3.4%); opinion writing (2.8%); drafting documents (10.2%); and correspondence (10.0%). Presenting oral argumentation was also ranked in the lower half of the skills by all groups. The small degree of importance attributed to oral advocacy may be explained in part by the custom of the Kentucky Court of Appeals to dispense with oral arguments except upon motion in cases of special importance.

Knowledge of common law subjects was considered unimportant by all groups of survey respondents. This may reflect growth in the importance of statutory law resulting from the rapid increase in the amount of statutory material with which the attorney must work. Knowledge of administrative procedure was rated extremely low, although it was significantly more important for government lawyers than for others, as mentioned above. Lending support to the traditional lack of emphasis on memory work in the law school curriculum, lawyers in all groups ranked memory skills at the bottom of the list.

Although comparisons with other studies were difficult to make in some instances due to the difference in the scope<sup>24</sup> and in the labeling of skills, the results of the Kentucky survey were comparable to those obtained by Schwartz in his survey of California lawyers.<sup>25</sup> Analysis and synthesis of decisions, legal

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<sup>23</sup> All comparisons between the ratings of private and government practitioners were significant at the .05 level.

<sup>24</sup> The California survey was made up of 15 legal skills exclusive of personality characteristics.

<sup>25</sup> Schwartz, *supra* note 8.

research, knowledge of substantive law, counseling, and interviewing were highly endorsed in both surveys. However, counseling and negotiation were more highly ranked in the California study than in the Kentucky survey. Like Kentucky lawyers, California attorneys did not consider oral skills, such as eliciting facts under adverse confrontation and oral argumentation, to be of great importance to the practice of law. Government attorneys in the California study as well as those in the Kentucky survey rated analysis and synthesis of decisions, legal research, and knowledge of substantive law very highly. However, interpersonal skills were ranked substantially lower by government lawyers in the Kentucky survey than by those in the California survey. California government attorneys ranked counseling and interviewing third and seventh in order of importance to their practice, while their Kentucky counterparts ranked them twenty-ninth and twenty-fifth, respectively.

The results of the Kentucky survey also lend support to Stevens' studies<sup>26</sup> in which law school alumni strongly endorsed the teaching of communication skills including the ability to counsel and interview clients and to negotiate and arbitrate. While interviewing and counseling were ranked highly in the Kentucky survey by the largest group of respondents—private practitioners—as well as by respondents as a whole, negotiation was ranked highly only by the corporation lawyers.

Again, insufficient similarity in the skills sampled precludes any meaningful comparison between the University of Toledo survey<sup>27</sup> and the Kentucky survey. However, the skill of dealing with facts, which was ranked first by the Toledo graduates, is comparable to organizing facts, which was ranked highly by respondents in the Kentucky survey. In the Illinois survey, Dunn recommended that more practical courses be added to the curriculum.<sup>28</sup> This conclusion is supported by the Kentucky survey in which lawyering skills such as interviewing and counseling achieved a high ranking.

Table 10 indicates the percentage of respondents who believed that each of the first 23 skills or characteristics listed on

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<sup>26</sup> Stevens, *supra* note 9.

<sup>27</sup> Stern, *supra* note 7.

<sup>28</sup> Dunn, *supra* note 5.



the questionnaire could be taught in law school. A majority of the respondents felt that the 15 top rated skills or characteristics could be taught. However, thinking quickly on one's feet, counseling, interviewing, and negotiating were not widely endorsed as capable of being taught in law school. Memorizing facts (27.8%) and understanding non-legal problems surrounding client's problems were, according to the respondents, least capable of being taught. There are other skills and characteristics about which the survey did not inquire. It would be interesting in a follow-up study to determine to what extent attorneys feel that understanding human behavior; self-confidence; persistence; sense of humor; pleasant, engaging personality; and personal care and dress could be taught in law school and furthermore, whether they should be taught. These skills or characteristics were highly ranked by all groups of respondents.

TABLE 10  
Percentage of Respondents Indicating Skill  
or Characteristic Can Be Taught  
in Law School

Skill or Characteristic	Percent of Total Respondents
Knowledge of common law subjects	87.8%
Knowledge of statutory law subjects	82.7
Knowledge of trial and appellate procedure	84.4
Knowledge of administrative procedure	75.1
Legal research	89.5
Analysis and synthesis of laws and decisions	74.5
Legal writing	86.7
Writing or drafting under pressure	50.7
Organizing facts	64.0
Organizing argumentation	63.7
Memorizing legal concepts	39.7
Memorizing facts	27.8
Presenting oral argumentation	71.4
Quick legal analysis	42.5
Presenting written argumentation	68.3
Thinking quickly on one's feet	34.3
Eliciting facts under adverse confrontation	33.1
Persuasive expression under pressure	29.5
Interviewing clients and witnesses	51.3
Investigating facts	49.0
Understanding non-legal problems surrounding client's legal problems	23.5
Counseling clients	38.2
Negotiating	40.8

In question 12, attorneys were asked to rank in order of importance four broad categories of knowledge and skills. Substantive knowledge was ranked first, while interviewing, counseling and negotiation were ranked as second in order of importance. Legal research and writing and oral advocacy were ranked third and fourth, respectively. Multiple t-tests revealed that all possible comparisons between these four areas were significant.

Table 11 indicates the order of importance of courses taken in law school. Again, core courses stressing substantive knowledge of the law were ranked as most important (contracts, procedure, and torts), corresponding to the response to question 12 pertaining to types of courses previously discussed. Practice courses (pre-trial procedure and negotiation seminars) were ranked as second in order of importance. Respondents ranked oral advocacy and writing programs as third and fourth. This would seem to represent a slightly higher rating than that given in question 10 in which legal writing, writing or drafting under pressure, presenting oral argumentation, and presenting written argumentation were ranked nineteenth, twenty-first, twenty-second, and twenty-fourth, respectively (*i.e.*, ranked in the bottom half of the skills). As might be expected "non-bread and butter courses" or highly theoretical courses were last in order of importance.

TABLE 11  
Rank Order of Importance  
of Law School Subjects

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Type Subject	Mean* Score
Core courses	1.31
Practice courses	1.97
Oral advocacy programs	2.06
Writing programs	2.14
Courses in administrative subjects	2.37
Planning courses or seminars	2.53
Clinical programs	3.22
Courses or seminars in "mind-stretching" subjects	3.73

\* Skills were rated on a 5 point-scale with 1 = "extremely important to me" and 5 = "not important to me".

Comparison of the responses of private practitioners and government attorneys revealed that the latter found clinical programs to be significantly ( $F = 7.71$ ,  $df = 2/389$ ,  $p < .05$ ) more important than did the former. This might be explained by the nature of many clinical programs in which students are placed in legal aid offices and other government agencies where they become well acquainted with administrative procedures. Students later entering government work would find this knowledge particularly useful in their work. The "stepping-stone" phenomenon might also explain the result. If it is true that recent law school graduates often enter government work as a preliminary to private practice or to work elsewhere, then the government attorneys may largely be made up of recent graduates. This group would more likely be acquainted with clinical programs, which have generally been developed within the last five years, and would be more likely than other groups to endorse them. This theory is supported by the survey results, which indicate that 51.6% of government attorneys had been in practice seven years or less; whereas, 38% of the remaining survey respondents had been in practice for that period of time. Phraseology of the question may in part have accounted for the response. Since "legal aid" was the only example given for clinical programs, respondents may have concluded that legal aid was the only type of clinical experience to which the inquiry was directed. Finally, there was a non-significant trend for private practitioners to view planning courses or seminars as being more important to lawyers than did attorneys employed in any other field. There were no other differences in importance of these courses related to type of work.

#### D. *Continuing Education*

Respondents were asked to indicate what means they had employed to supplement their legal skills since law school. An overwhelming majority made use of continuing legal education to some extent. Nearly 85% of the respondents indicated that they had read books to supplement their law school education. Sixty-eight percent had attended formal continuing legal education programs, 28% had participated in trial advocacy institutes, and 26% indicated that they had pursued other forms of continuing legal education, which included specialized training

under law firm sponsorship, tax conferences, and advanced academic degrees.

Table 12 shows the order of importance assigned to various forms of continuing legal education by respondents. It should be noted that while books were the most frequently employed means of supplementing an attorney's legal education, they were not rated as highly as other forms of continuing education.

TABLE 12

Rank Order of Continuing Education Methods  
with Regard to Importance to Practice

<u>Forms of Education</u>	<u>Mean*</u> <u>Score</u>
Initial three years of law school	1.49
Other	1.83
Continuing legal education	2.11
Books by specialists	2.29
Trial advocacy institutes	2.82
Additional law school courses	3.29
Cassette tape instructional programs	3.58
Additional undergraduate courses	3.74

\* Skills were rated on a 5 point-scale with 1 = "extremely important to me" and 5 = "not important to me".

### *Conclusion*

The first conclusion which one must draw from the survey data is that substantive or core courses traditionally emphasized in law school are extremely important to the practice of law. A majority of survey respondents were involved in a broad general practice in which knowledge of torts, property, wills and trusts, criminal law and corporate law plays an important role. Attorneys indicated that they spent considerable amounts of time in legal writing tasks and library research. Knowledge of statutory law subjects, legal research, and analysis and synthesis of laws and decisions were all identified as very important to the practice of law. The high rating given to statutory law subjects may suggest a need for more extensive course work in statutory interpretation.

On the other hand, lawyers also placed a great deal of importance on skills which have received little or no attention from law schools. Interpersonal skills such as interviewing and

counseling were ranked as highly important to the practice of law. Understanding human behavior was also ranked among the top five skills or characteristics by three of four groups of survey respondents. Time spent in interviewing and counseling was shown to be comparable to that spent in legal research and drafting documents. The argument has been made that courses devoted to teaching skills of this kind are void of intellectual content and have no place in the law school curriculum. Some have urged that these skills are better learned in practice and constitute a drain on law school resources.<sup>29</sup> Whatever the reason has been for failing to implement the skills courses, results of the survey would suggest an urgent need for their implementation. It may be that law schools will have to call upon the behavioral scientists for help in structuring courses of this kind.

Survey results showed that attorneys spent large amounts of time in three general task areas: litigation-oriented tasks (23.7% of their time); writing tasks (32.3% of their time) and tasks involving interpersonal skills (23.3% of their time). These data suggest a further need for skills courses in areas other than interpersonal skills such as advanced legal writing and practice court.

Another dimension of the survey data points to the diversification of the legal profession, a topic which received considerable attention in the Carrington Report.<sup>30</sup> Training the private practitioner (especially the sole practitioner or the partner in a small firm) may differ substantially from training the government attorney or the corporate counsel. Interpersonal skills were obviously more important to the private practitioner than to the government lawyer. The corporate counsel indicated a need for skills training as a negotiator, which was not emphasized by other groups of attorneys. Government attorneys found legal research skills more important to their practice than did other groups.

In light of such conclusions and the data upon which they are based, the University of Kentucky College of Law is cur-

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<sup>29</sup> See Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140 (1971).

<sup>30</sup> ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971 (P. Carrington ed. 1971), reprinted in H. PACKER & T. EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 95 (1972).

rently at work on a major curriculum project. A proposal has been drafted for faculty consideration. In that proposal, the Program Development Committee has recommended the addition of skills courses in both interviewing and counseling. It is thought that this would be accomplished by clinical as well as classroom-simulated operational methods.<sup>31</sup> Another proposed innovation would require a student to devote substantially an entire semester to a clinical program. In addition, a "tracking system" has been suggested which would allow a student to concentrate in a particular area of the law. Business and taxation or litigation tracks would be representative of this system. Finally, giving some form of recognition to concentration in an identified area of study is also being considered. Upon successful completion of a certain number of hours beyond the minimum required for graduation, a student could be awarded a certificate in a specialty area.

As previously noted, far too little has been done to identify the skills needed by practicing attorneys and to reshape law school curricula to better develop those skills. By providing a clearer picture of exactly what the Kentucky Bar does in the practice of law, the present survey has enabled the University of Kentucky College of Law to more accurately assess its educational programs and the directions in which they should be focused. Hopefully, it will also be helpful to other law schools in curriculum planning and will provide an impetus for continuing study in this area.

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<sup>31</sup> See Peden, *The Role of Practical Training in Legal Education: American and Australian Experience*, 24 J. LEGAL ED. 503, 520 (1971). Peden uses "operational" to connote training which is limited to simulated or hypothetical situations; whereas, "clinical" refers to training in real life situations.

## APPENDIX

*Survey of Kentucky Lawyers*

1. For how many years have you practiced law?
 

<input type="checkbox"/> 3 years or less	<input type="checkbox"/> 16 - 25 years
<input type="checkbox"/> 4 - 7 years	<input type="checkbox"/> 26 - 40 years
<input type="checkbox"/> 8 - 15 years	<input type="checkbox"/> over 40 years
  
2. Are you a graduate of:
 

<input type="checkbox"/> University of Kentucky College of Law
<input type="checkbox"/> University of Louisville School of Law
<input type="checkbox"/> Chase College of Law
<input type="checkbox"/> Other (please specify)
  
3. What is the population in the city or town in which your office is located?
 

<input type="checkbox"/> under 5,000	<input type="checkbox"/> from 50,000 to 100,000
<input type="checkbox"/> between 5,000 and 25,000	<input type="checkbox"/> over 100,000
<input type="checkbox"/> over 25,000 but under 50,000	<input type="checkbox"/> over 250,000
  
4. In which kind of work are you presently involved?
 

<input type="checkbox"/> private or firm practice	<input type="checkbox"/> military lawyer
<input type="checkbox"/> government lawyer	<input type="checkbox"/> law teaching
<input type="checkbox"/> judiciary	<input type="checkbox"/> retired
<input type="checkbox"/> corporation lawyer	<input type="checkbox"/> other (please specify)
  
5. In which of the following kinds of lawyer activity have you had previous experience?
 

<input type="checkbox"/> private or firm law practice	<input type="checkbox"/> military lawyer
<input type="checkbox"/> government lawyer	<input type="checkbox"/> law teaching
<input type="checkbox"/> judiciary	<input type="checkbox"/> other (please specify)
  
6. If you are in private or firm practice, what is the size of your firm?
 

<input type="checkbox"/> solo	<input type="checkbox"/> 11 to 15 lawyers
<input type="checkbox"/> two lawyers	<input type="checkbox"/> 16 to 25 lawyers
<input type="checkbox"/> three lawyers	<input type="checkbox"/> 26 to 50 lawyers
<input type="checkbox"/> 4 to 10 lawyers	<input type="checkbox"/> over 50 lawyers
  
7. Would you please indicate the approximate size of your income?
 

<input type="checkbox"/> under \$15,000 per year
<input type="checkbox"/> between \$15,000 and \$20,000 per year
<input type="checkbox"/> between \$21,000 and \$35,000 per year
<input type="checkbox"/> between \$36,000 and \$50,000 per year
<input type="checkbox"/> over \$50,000 per year
  
8. Please indicate approximately what percentage of your activity as a lawyer or judge involves the following areas:
 

<input type="checkbox"/> corporate and corporate finance law	<input type="checkbox"/> real estate transactions
--	---

- |  |   |
|--|---|
| <input type="checkbox"/> personal injury law       | <input type="checkbox"/> family law               |
| <input type="checkbox"/> criminal law              | <input type="checkbox"/> community legal services |
| <input type="checkbox"/> workmen's compensation    | <input type="checkbox"/> labor relations          |
| <input type="checkbox"/> banking and finance law   | <input type="checkbox"/> taxation                 |
| <input type="checkbox"/> collection                | <input type="checkbox"/> bankruptcy               |
| <input type="checkbox"/> wills, trusts and probate | <input type="checkbox"/> other (please specify)   |

9. Please indicate approximately how many hours per week (or hours per month if more applicable) you spend in the following tasks:

hrs/wk    hrs/mo

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | library research                               |
| <input type="checkbox"/> | <input type="checkbox"/> | preparing legal memoranda                      |
| <input type="checkbox"/> | <input type="checkbox"/> | brief writing                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | jury trial                                     |
| <input type="checkbox"/> | <input type="checkbox"/> | non-jury trial or hearing                      |
| <input type="checkbox"/> | <input type="checkbox"/> | motion and appellate argument                  |
| <input type="checkbox"/> | <input type="checkbox"/> | opinion writing                                |
| <input type="checkbox"/> | <input type="checkbox"/> | interviewing clients                           |
| <input type="checkbox"/> | <input type="checkbox"/> | deposition taking                              |
| <input type="checkbox"/> | <input type="checkbox"/> | other fact investigation                       |
| <input type="checkbox"/> | <input type="checkbox"/> | other preparation for trial                    |
| <input type="checkbox"/> | <input type="checkbox"/> | orally counseling clients                      |
| <input type="checkbox"/> | <input type="checkbox"/> | drafting documents                             |
| <input type="checkbox"/> | <input type="checkbox"/> | negotiating (including plea bargaining)        |
| <input type="checkbox"/> | <input type="checkbox"/> | correspondence                                 |
| <input type="checkbox"/> | <input type="checkbox"/> | office administrative and organizational tasks |
| <input type="checkbox"/> | <input type="checkbox"/> | teaching                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | civic functions                                |

10. Please rate the importance to your practice of the following skills or characteristics on a scale from 1 to 5 by circling the number.

- 1 - extremely important to me in my practice of law  
 2 - very important to me in my practice of law  
 3 - somewhat important to me in my practice of law  
 4 - slightly important to me in my practice of law  
 5 - not important to me in my practice of law

- |   |   |   |   |   |   |
|---|---|---|---|---|---|
| 1. Knowledge of common law subjects             | 1 | 2 | 3 | 4 | 5 |
| 2. Knowledge of statutory law subjects          | 1 | 2 | 3 | 4 | 5 |
| 3. Knowledge of trial and appellate procedure   | 1 | 2 | 3 | 4 | 5 |
| 4. Knowledge of administrative procedure        | 1 | 2 | 3 | 4 | 5 |
| 5. Legal research                               | 1 | 2 | 3 | 4 | 5 |
| 6. Analysis and synthesis of laws and decisions | 1 | 2 | 3 | 4 | 5 |
| 7. Legal writing                                | 1 | 2 | 3 | 4 | 5 |
| 8. Writing or drafting under pressure           | 1 | 2 | 3 | 4 | 5 |
| 9. Organizing facts                             | 1 | 2 | 3 | 4 | 5 |
| 10. Organizing argumentation                    | 1 | 2 | 3 | 4 | 5 |
| 11. Memorizing legal concepts                   | 1 | 2 | 3 | 4 | 5 |
| 12. Memorizing facts                            | 1 | 2 | 3 | 4 | 5 |
| 13. Presenting oral argumentation               | 1 | 2 | 3 | 4 | 5 |
| 14. Quick legal analysis                        | 1 | 2 | 3 | 4 | 5 |



- 15. Presenting written argumentation 1 2 3 4 5
- 16. Thinking quickly on one's feet 1 2 3 4 5
- 17. Eliciting facts under adverse confrontation 1 2 3 4 5
- 18. Persuasive expression under pressure 1 2 3 4 5
- 19. Interviewing clients and witnesses 1 2 3 4 5
- 20. Investigating facts 1 2 3 4 5
- 21. Understanding non-legal problems surrounding client's legal problems 1 2 3 4 5
- 22. Counseling clients 1 2 3 4 5
- 23. Negotiating 1 2 3 4 5
- 24. Physical endurance 1 2 3 4 5
- 25. Self-confidence 1 2 3 4 5
- 26. Sense of humor 1 2 3 4 5
- 27. Understanding of human behavior 1 2 3 4 5
- 28. Persistence 1 2 3 4 5
- 29. Pleasant, engaging personality 1 2 3 4 5
- 30. Personal care and dress 1 2 3 4 5

11. Among the skills listed in question 9,\* which do you feel can be taught in law school?

- |    |     |     |     |     |
|----|-----|-----|-----|-----|
| 1. | 6.  | 11. | 16. | 21. |
| 2. | 7.  | 12. | 17. | 22. |
| 3. | 8.  | 13. | 18. | 23. |
| 4. | 9.  | 14. | 19. |     |
| 5. | 10. | 15. | 20. |     |

Comments:

\* Question 11 should have referred to Question 10 instead of 9. Responses to the questionnaire indicated that a majority of the respondents assumed that a reference to Question 10 was intended.

12. Please arrange the following in their order of importance to lawyers generally.

- |   |                                  |
|---|----------------------------------|
| _____ substantive knowledge                 | _____ legal research and writing |
| _____ interviewing, counseling, negotiation | _____ oral advocacy              |

13. Please rate the importance of the following law school courses on a scale of 1 to 5 by circling the number.

- 1 - extremely important to the practice of law
- 2 - very important to the practice of law
- 3 - somewhat important to the practice of law
- 4 - slightly important to the practice of law
- 5 - not important to the practice of law

- |   |           |
|---|-----------|
| Core courses - e.g., contracts, procedure, torts, property, constitutional law, wills and trusts            | 1 2 3 4 5 |
| Courses in administrative subjects - e.g., workmen's compensation, taxation, labor law                      | 1 2 3 4 5 |
| Courses or seminars in "mind stretching" subjects - e.g., jurisprudence, international law, law and science | 1 2 3 4 5 |

Clinical programs - e.g., legal aid	1	2	3	4	5
Planning courses or seminars - e.g., estate planning, tax planning	1	2	3	4	5
Writing programs - e.g., moot court, law journal, legal research and writing	1	2	3	4	5
Oral Advocacy programs - e.g., moot court, practice court	1	2	3	4	5
Practice courses - e.g., pre-trial procedure, negotiation seminars	1	2	3	4	5

Comments:

14. Please list any courses, seminars, or other programs, which you think should receive more emphasis in law school.

15. Since receiving your professional degree, which of the following have you pursued to supplement your legal skills?

additional undergraduate courses       cassette tape instructional programs  
 additional law school courses       books by specialists  
 continuing legal education       other (please describe)  
 trial advocacy institutes

16. Please rate the importance to your practice of the items specified in question 15 by circling the number.

- 1 - extremely important to the practice of law  
 2 - very important to the practice of law  
 3 - somewhat important to the practice of law  
 4 - slightly important to the practice of law  
 5 - not important to the practice of law

Initial three years of law school	1	2	3	4	5
Additional undergraduate courses	1	2	3	4	5
Additional law school courses	1	2	3	4	5
Continuing legal education	1	2	3	4	5
Trial advocacy institutes	1	2	3	4	5
Cassette tape instructional programs	1	2	3	4	5
Books by specialists	1	2	3	4	5
Other (as specified)	1	2	3	4	5

