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Recommended Citation

Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 *Cornell L. Rev.* 221 (1974).

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AMERICAN LEGAL EDUCATION: AN AGENDA FOR RESEARCH AND REFORM*

Barry B. Boyer† and Roger C. Cramton‡

INTRODUCTION

American legal education is now enjoying unparalleled success. Each year many of the brightest college graduates choose to study law, and virtually all law schools are swamped with highly qualified applicants.¹ Curriculum offerings are expanding across the nation, both in the substantive content of courses and in the range of skills dealt with in the curriculum. A large and growing number of law schools have enriched their faculties by bringing in scholars from other disciplines such as economics, sociology, psychiatry, and history, and a new breed of law-trained teachers themselves possess more knowledge of related disciplines. Moreover, despite serious financial retrenchment in higher education, many law schools have suffered less than most other graduate schools from the squeeze of rising costs and diminished resources.²

Yet even where law schools are financially healthy, there exists behind the facade of success a strong undercurrent of unease among those concerned about the future of legal education. Increasing selectivity in law school admissions, and greater dependence in admissions upon applicants' paper credentials, generate

* This Article was prepared as a Report to the American Bar Foundation to aid in the planning phase of a Foundation program of studies on legal education. The authors wish to express their gratitude to Spencer L. Kimball, Executive Director of the American Bar Foundation and Barbara A. Curran, Yakov Avichai, and Felice J. Levine of the Foundation staff for their patient support and critical assistance in the preparation of this Article. In addition, the American Bar Association Special Committee for a Study of Legal Education, under the capable direction of Chairman LeRoy Collins, provided many valuable insights and comments in the course of this study.

Finally, the authors were fortunate in receiving the advice of many law teachers during the preparation of this Article. Among those who were exceptionally generous with their time and ideas are David F. Cavers, Walter Gellhorn, Robert C. McClure, Robert B. Stevens, Alan A. Stone, Peter L. Strauss, Frank R. Strong, and Andrew S. Watson. Of course, the authors take sole responsibility for the contents of this Article.

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¹ See R. Freeman, *Legal Cobwebs: The Changing Market for Lawyers* 1-3 (Harvard Institute of Economic Research, Discussion Paper No. 314, Aug. 1973) (unpublished).

² See *The Washington Post*, Mar. 26, 1973, § A, at 1, col. 1; Pye, *Book Review*, 1973 *DUKE L.J.* 899, 906-08.

concerns whether the profession is drawing its recruits from too narrow a range of abilities and socioeconomic classes, and even whether the selection criteria are measuring the proper variables. The teaching method and first-year curriculum used by most law schools today antedate the present century. Yet innovations such as clinical law programs and interdisciplinary courses raise suspicions that law schools may only be responding to faddish demands for "relevance," which tend to diminish the quality of legal education, while avoiding needed reforms in legal education. Finally, the ostensible financial health of legal education may be only a reflection of a limited commitment to research and of student-faculty ratios that would be considered intolerable in most other disciplines.³

Current travails in the world of affairs reinforce doubts that the law schools have fully equipped the present generation of lawyers to perform their professional tasks. Although large numbers of lawyers continue to serve their clients and the public interest with dedication and integrity, reports of unethical or illegal conduct by members of the legal profession dominate the news. The special preserves of lawyers—the civil and criminal justice systems—are beset by high costs, delays, inefficiency, and inadequate representation. Lawyers play a dominant role in public affairs at all levels of government, but the people's confidence in these governmental institutions appears badly eroded. Indeed, it may be true that the traditional leadership role of the lawyer as a people-oriented generalist and problem solver is now threatened by the sophisticated techniques for analyzing social problems developed by a new breed of economists, systems analysts, computer programmers, and management experts.

The tendency to see a "crisis" in every current issue often is muted when viewed in the broader perspective of history. It is possible that the law schools are performing better in all respects than ever before, but are suffering from a widespread psychology of rising expectations in which improved performance suffers by comparison with exaggerated notions of what can or should be done. Moreover, our society may be making increased, and sometimes unrealistic, demands on lawyers and the legal system as other social institutions lose influence and authority. While the causes or validity of the current concern about legal education are unclear, the existence of such concern on the part of many perceptive observers is evident.

³ See note 234 *infra*.

The crosscurrents of hopes and fears, and the recognized need to adapt legal education to the needs of a rapidly changing society while preserving traditional values, led a Special Committee of the American Bar Association in 1972 to recommend that the American Bar Foundation undertake a program of research on legal education.⁴ The basic purpose of this program is "to determine the expectations and experience of law students in the course of their legal education, and to compare those with the experience and judgment of practicing lawyers and teachers concerning legal education."⁵ An underlying premise of the ABA Report is that the program of research should be empirically based, focused on the principal factors in the process of legal education, and designed with the objective of aiding decision-making on important issues currently confronting legal education.

This Article constitutes the initial step in the American Bar Foundation's program of studies. The authors were commissioned by the Foundation to survey the existing empirical knowledge of law schools, law students, and law teachers, and to suggest areas in which further research is needed to lift "the shadow of very considerable ignorance"⁶ that affects decision-making in legal education. What is the "state of the art" concerning our knowledge of the operation and effects of legal education? What research is desirable to fill the gaps in this knowledge? And what research priorities should be established in a world in which information is costly and resources are scarce?

I

HISTORICAL PERSPECTIVES

In legal education, as elsewhere, a glimpse at the past provides perspectives on current problems. Although the total volume of historical writing on legal education is small, we are fortunate that much of it is of high quality and deep intellectual perspective. In particular, the work of Alfred Z. Reed,⁷ Brainerd Currie,⁸ Calvin

⁴ See generally ABA SPECIAL COMM. TO CONSIDER THE FEASIBILITY OF UNDERTAKING A COMPREHENSIVE SURVEY OF THE LEGAL PROFESSION, REPORT (Aug. 1972). The Committee also recommended "that there be created a committee to be called the Special Committee for a Study of Legal Education consisting of seven members," which would "advise and assist the American Bar Foundation in devising and conducting such [a] study." *Id.* at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921); see Stolz, *Training for the Public Profession of the Law (1921): A Contemporary Review*, in H. PACKER & T. EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 227 (1972) [hereinafter cited as PACKER & EHRLICH].

Woodard,⁹ and Robert Stevens¹⁰ provides an excellent base for future explorations.

A central historical datum is that law schools have monopolized the function of "gatekeepers" to the profession for a relatively short time. Fifty years ago, academic training for aspiring lawyers was an ideal rather than a requirement,¹¹ and it is only within the past few years that the completion of three years of formal legal education has become virtually the universal method of entering the profession.¹²

Although the law schools' control over entry into the profession has changed markedly, the basic techniques of legal education have proven remarkably stable and durable. The large-class, case method of instruction, usually in a "Socratic" question-and-answer format, has dominated law teaching since it was pioneered by Langdell nearly a century ago. The reasons for the longevity and popularity of the case method are several: its general pedagogical effectiveness, particularly in comparison to lectures; its adaptability to large classes, and thus its low cost;¹³ and, perhaps most impor-

⁸ Currie, *The Materials of Law Study* (pts. 1-2), 3 J. LEGAL ED. 331 (1951), (pt. 3), 8 J. LEGAL ED. 1 (1955).

⁹ See Woodard, *The Limits of Legal Realism: An Historical Perspective*, in PACKER & EHRLICH 331.

¹⁰ See Stevens, *Two Cheers for 1870: The American Law School*, in LAW IN AMERICAN HISTORY 405 (B. Bailyn & D. Fleming eds. 1972) [hereinafter cited as *The American Law School*]; Stevens, *Legal Education: Historical Perspectives* [hereinafter cited as *Legal Education: Historical Perspectives*], in CLINICAL EDUCATION FOR THE LAW STUDENT 43 (Working Papers prepared for the CLEPR National Conference 1973) [hereinafter cited as CLINICAL EDUCATION FOR THE LAW STUDENT].

¹¹ Robert B. Stevens has noted that at the time of World War I, no state required attendance at law school as a prerequisite for admission to the bar. During the 1920's, formal requirements expanded rapidly, but for the most part a period of apprenticeship was recognized as an alternative to law school education. See *The American Law School* 459, 496-97.

¹² See *Legal Education: Historical Perspectives* 48:

The steadily rising standards of the A.B.A. and A.A.L.S. have made law schools conform more obviously to certain norms. By 1970, only a handful of jurisdictions even allowed admission to the bar by apprenticeship; and where it was legally allowed, it was in practice virtually unknown. All jurisdictions but one effectively demand three years of law school; some eight jurisdictions require an undergraduate degree before entering law school and another thirty jurisdictions require at least three years of college before law school.

For an examination of political forces within the practicing bar and the teaching profession which led to the raising of academic standards and the standardization of legal education, see Stolz, *supra* note 7, at 227.

¹³ E.g., *The American Law School* 444-45:

It was the vast success of Langdell's method . . . which established the large-size class. While numbers fluctuated, Langdell in general managed Harvard with one professor for every seventy-five students. The schools attempting to emulate Harvard could barely ask for a "better" faculty-student ratio. What was more, any educational innovation which incidentally allowed one man to teach ever more students was not unwelcome to university administrators. Although the

tant, its ability to accommodate differing intellectual currents and differing conceptions of the law. To Langdell, law was a science and its laboratory was the library; the case method extracted fundamental principles from the raw material of printed decisions in the logical manner of the physical sciences.¹⁴ Soon, however, doubts about the "scientific" nature of law and the existence of a manageable body of universally valid legal principles foreshadowed the pervasive skepticism of the Realist School that emerged during the 1930's.¹⁵ As this changing conception of the law evolved, the principal focus of the case method shifted from principles to process. But the case system continued to be the primary vehicle for instruction, even though conceptions of the nature of law changed radically.

With the publication of the famous article by Lasswell and McDougal on legal education and public policy in the 1940's,¹⁶

university-affiliated law schools were slowly put on a nonprofit basis, the "Harvard method of instruction" meant that from the first they were expected to be self-supporting.

¹⁴ See, e.g., *id.* at 435-37. Calvin Woodard has argued that Langdell's conception of law had a formative effect not only on the methodology of law teaching but also on the status of the law school in the university:

The case method not only applied reason to law, it made law a science; and it not only made law a science, it made it an inductive science.

This last point was of paramount importance, for it placed law on the same footing in the academic world as the burgeoning physical and social sciences, rather than on the level of the lethargic moral sciences, which it had occupied first on the continent and later in England. As a result law became part of the main stream of modern educational experimentation and development; and as an inductive science it became a charter member of the new secularized, research-oriented universities coming into being at the end of the nineteenth century.

Woodard, *supra* note 9, at 356-57.

¹⁵ See *The American Law School* 480-81. Stevens notes the beginnings of reaction against the Langdellian view well before the end of the 19th Century. See *id.* at 440. He also distinguishes the "functionalism" of the 1920's, which centered around the Columbia curriculum studies on the relationship of law and the social sciences, from the realism of the 1930's. See *id.* at 470-75. Stevens concludes:

The Realist Movement finally killed the idea of law as an exact science. Legal rules could no longer be assumed to be value-free. Their predictive value was seriously questioned. The emphasis of legal observation was finally established as being process rather than substance.

Id. at 480-81.

¹⁶ Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943). According to Lasswell and McDougal, previous efforts to integrate law and the social sciences had been largely unsuccessful because of a "lack of clarity about *what* is being integrated, and *how*, and *for what* purposes." *Id.* at 204 (emphasis in original). Their basic proposition was stated as follows:

[I]f legal education in the contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic *training for policy-making*. The proper function of our law schools is, in short, to contribute to the training of policy-makers for the ever more complete achievement of the democratic values that constitute the professed ends of American polity.

Id. at 206 (emphasis in original). Thus, in addition to the traditional emphasis on "legal

thought about the nature and function of law entered the "post-Realist period."¹⁷ Despite the wide currency of the Lasswell-McDougal approach and the considerable discussion it provoked, the concept of the lawyer as policy maker and implementer of democratic values had only a modest influence on the total law curriculum. At best, more emphasis was given to the policy aspects of standard course content, and a sprinkling of seminars devoted to policy questions were added to the curriculum. These policy courses, however, were usually electives that were taken by only a small proportion of the eligible law students, and their introduction was largely confined to a handful of elite private schools until the rapid improvement of publicly-supported law schools in recent years.

The trend toward "secularization" of the law has continued unabated,¹⁸ and the prevailing jurisprudence of many current members of the bar and the teaching profession has been described as "Neo-Realism":

Its faith is a strong one which challenges the significance of the traditional activities of law teachers and indeed of the bar itself. The faith centers on three related propositions. First, the law is not a cultural but a behavioral phenomenon, best understood through the techniques of the social sciences. Second, opinions are at best rationalizations for decisions reached on other grounds which have little to do with the reasons articulated. Third, the successful practice of law is the art of winning what one's client wants in controverted matters, and within the limits of conduct deemed clearly improper by the society such as bribery, the art of the lawyer is persuading the relevant official to favor one's client.¹⁹

technicality," the law curriculum should attempt to provide students with "skills of thought" such as "goal-thinking," "trend-thinking," and "scientific-thinking," as well as "skills of observation" and "skills of management." See *id.* at 216-17.

¹⁷ *The American Law School* 530.

¹⁸ The theme of secularization is developed at length by Woodard. He defines secularization as

a cluster of three interrelated propensities which, together, have become increasingly characteristic of western thought during the past four hundred years. The first factor is a tendency to nurture a distinctive way of perceiving the environment in which man lives ("rationalism"). The second is a propensity to stimulate the development of systematic procedures and a scholarly regime capable of exploiting the rationalistic perception of law so as to produce new knowledge about the world (the "scientific method"). The third characteristic is a penchant to excite the further development of techniques and skills by which scientific knowledge can be readily adapted to the practical needs of man and society ("technology" and "applied science").

Woodard, *supra* note 9, at 333.

¹⁹ E. KITCH, CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 9 (paper ed. 1970).

One aspect of this approach, a commitment to empirical research on the operation of legal institutions, has made substantial progress, at least at the better-financed schools. But the limited training of law teachers in the methodology of social research, their reluctance to engage in organized team studies, and the absence of substantial funds to support these more expensive forms of intellectual inquiry have had serious effects on the quantity and quality of the research product.

Another aspect of this contemporary emphasis on the lawyer's many roles as manipulator and facilitator is the effort of many legal educators to develop in the student skills other than an ability to critically analyze presented cases. Concern for an understanding of legislative and administrative processes in earlier years has expanded to a broader interest in the totality of skills required for the many professional roles to be assumed by law graduates. Increasingly, training in these skills takes the form of role-playing experiences in clinical programs or simulated practice situations.²⁰ Emphasis on the varied roles as investigator, counselor, negotiator, and advocate performed by lawyers is a major feature of current analysis of the law curriculum. It is both logical and a bit ironic that the case method of instruction, which was originally considered "clinical" in the sense of exposing students to "the living law" rather than abstract theory,²¹ is facing its strongest challenge from modern clinical methods of instruction.

II

CURRENT ISSUES OF CURRICULUM AND PEDAGOGY

A striking as well as depressing aspect of current debates over the future shape of the law school curriculum is the ancient lineage of many of the major issues, and their cyclical reappearance in the literature on legal education. Indeed, the historians remind us that

²⁰ Some legal educators employ the concepts of professional roles developed in the behavioral sciences quite extensively in clinical programs. See, e.g., Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 374, 379:

The [clinical] method to which I am referring has three main features: 1) the student's assumption and performance of a recognized role within the legal system; 2) the teacher's reliance on this experience as the focal point for intellectual inquiry and speculation; and 3) a number of identifiable tensions which arise out of ordering the teaching-learning process in this way. What is envisioned is a mode of education which involves the systematic interaction of pedagogical technique and the psychological dynamics involved in role adjustment and definition.

²¹ The rationale of the case method as a form of "clinical" instruction is attributed to Roscoe Pound. See *The American Law School* 446-47.

the effort to integrate law and the behavioral sciences has been going on for nearly half a century²² and that "[a]rticles could be lifted out of the Law School News of 1915 and passed off today as, tolerably fresh ideas in the Journal of Legal Education."²³ Major discussions of curricular reform published in the last few years, such as the Carrington Report and the Carnegie-sponsored monograph by Packer and Ehrlich, illustrate this phenomenon.²⁴ Both works favor the encouragement of diversity in legal education, within and among law schools; both support experimentation with a "tracking" system that would provide substantially different educational experiences for those planning different careers in law. The recent proposals raise once again an issue which had been debated by the profession in the 1920's following Alfred Z. Reed's landmark study, *Training for the Public Profession of the Law*.²⁵

Reed described a wide range of kinds of legal education then common in this country The issue as Reed saw it was whether to try to force everyone into the image of the Harvard graduate or build a differentiated bar with some trained to do some things (he suggested that conveyancing, probate and trial practice might be possible), and others more broadly trained to be more widely competent.

. . . [A]s he viewed it, the "public" nature of the profession required part time legal education for those financially unable to attend college and full time law school. That being his prediction, it seemed to Reed more likely to be productive to work on redirecting the goals of part-time legal education. Classify the bar, either functionally or otherwise, with the part-time schools graduating men competent to perform the relatively routine tasks within the confines of a single jurisdiction.²⁶

Moreover, the Carrington Report and the Packer-Ehrlich monograph attempt to reopen the question of whether three years of legal education, following four years of undergraduate college, is the appropriate length of schooling for a lawyer—a proposition which greatly concerned Langdell,²⁷ and which was formally en-

²² *E.g.*, *id.* at 470: "World War I veterans who returned to the so-called national law schools found, among other things, that a flirtation with the 'soft' sciences was under way."

²³ Stolz, *supra* note 9, at 228.

²⁴ ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971 (P. Carrington ed. 1971) [hereinafter cited as the Carrington Report], reprinted in PACKER & EHRLICH 95.

²⁵ A. REED, *supra* note 7.

²⁶ Stolz, *supra* note 9, at 245-46.

²⁷ *The American Law School* 430:

From the beginning of his term as dean, Langdell had been anxious to return to the three-year model which Harvard had originally established in the 1820's; and eventually in 1878 Langdell achieved his goal. The requirement was slowly picked up by other schools

dorsed by the American Bar Association in 1921.²⁸ For nearly fifty years the trend in higher education has been in the direction of lengthening the period of education and increasing its cost. In the 1920's, admission to law school generally followed one, two, or three years of college. Today, when educational costs have advanced much faster than the rate of inflation in the economy, the bachelor's degree is generally required for admission to law school; and seven years of higher education is the norm for the law degree.

The increasing specialization of legal careers and the enormous range of abilities and skills required by a lawyer's activity have led to proposals for a two-year "generalist" curriculum followed by optional advanced or specialized programs of study.²⁹ According to the proponents of these proposals, the current structure of legal education is based upon an outmoded and unsound myth of the lawyer as a generalist competent to perform all legal tasks. The wave of the future, it is argued, will consist of education that differentiates in length and content between the training of lawyers for such routine functions as conveyancing, probate, and negligence practice, for example, and the training of lawyers for more specialized competence in such fields as economic regulation or taxation.

Dramatic proposals for restructuring legal education have not been received with enthusiasm by law faculties or the organized bar.³⁰ But today there is much greater interest in and tolerance of educational experimentation by individual law schools, from which, it is hoped, future patterns for legal education may develop. The period of study required to become a lawyer, of course, may be reduced by admitting students—especially the highly qualified and well-trained students now available—after three years of college as well as by shortening the standard law curriculum to two years. Proposals along this line may be a promising way to reduce the length and expense of professional training.

²⁸ Stolz (*supra* note 9, at 259), says of this action:

Unfortunately, no very good explanation can be given for the third year requirement because it was a totally noncontroversial aspect of the . . . resolution. It was noncontroversial because what the A.B.A. decreed in 1921 simply reflected what was then the practice of all but a few law schools. It had not, however, been standard for very long. . . .

. . . Why did Langdell think three years was right? So far as I know, he never explained.

²⁹ See, e.g., PACKER & EHRLICH; Carrington Report.

³⁰ The reactions by the bar and the teaching fraternity to these proposals for a two-year law program parallel the reception accorded to Reed's report in 1921. Compare Stolz, *supra* note 9, at 247-49, with Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL ED. 37 (1973).

Another major characteristic of the law school curriculum in recent decades has been the proliferation of new courses. The explosive growth of new areas of legal practice and government regulation, the lack of a consistent intellectual structure for the law curriculum, and the autonomy of faculty members reluctant to abandon or restructure their favorite courses,³¹ have all contributed to a familiar process of curriculum growth by accretion. New courses often are simply added on to the existing offerings rather than emerging from a shared faculty concept of how the educational process should be changed. A complementary and fairly recent phenomenon at most law schools is the lack of a recognized structure or theory for the elective curriculum that follows the required first-year courses. The sameness in course content and teaching methods throughout the law school experience, together with the absence of an orderly progression in the development of skills and substantive knowledge, have probably contributed to the frequently-noted boredom and withdrawal of some second- and third-year law students.³²

This fragmentation of the curriculum into a bewildering array of largely elective courses, as well as the individual stamp which law teachers impress upon the same courses and even the same teaching materials, make it difficult to determine with precision just what is being taught in the law schools. A few tentative efforts have been made to survey the law school catalogs in order to obtain an overview of what courses are offered to law students,³³ but information concerning the patterns of student elections or the content of the courses that they do elect is not available.³⁴ Aside from the

³¹ Walter Gellhorn has cogently remarked of law faculties, It is the devil's own job to shake anybody loose from his vested interest without hurting his feelings and running the risk that in return he will hurt yours.

... We might as well be legal realists about the fact that you as a professor can't tinker very much with what another professor is doing.

Roundtable on Curricular Reform, 20 J. LEGAL ED. 387, 420 (1968) (comment by Walter Gellhorn). Stevens has noted the effect of "egalitarianism and entrenchment within law school faculties":

[T]he American law schools largely ignore academic ranks (most faculty members are full professors)—a process which undoubtedly enhances independence of thought; particularly when coupled with tenure at an early age, it is no doubt one of the reasons why so many able persons have been attracted to academic law. Yet such an arrangement does not make for easy change and restructuring.

The American Law School 541-42.

³² For a seminal article on the problem of the second- and third-year curriculum, see Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964).

³³ See, e.g., Agnor, *A Survey of Present Law School Curricula*, 2 J. LEGAL ED. 510 (1950); Del Duca, *Continuing Evaluation of Law School Curricula—An Initial Survey*, 20 J. LEGAL ED. 309 (1968).

³⁴ At this writing, the American Bar Foundation is contemplating a research project on

general uniformity of the required first year, there is doubt as to whether the law schools are inculcating a common professional culture—a common core of values and knowledge—among their graduates.

Although these old curricular problems continue to elude solution, there are a few areas where genuine curricular progress either has occurred or appears possible. Understanding of the component skills involved in lawyering, for example, has been advanced by a number of valuable articles in the past few decades. The starting point was the 1944 report of the AALS Curriculum Committee,³⁵ chaired by Karl Llewellyn. This early analysis has been sharpened and refined by a number of later works, including Frank Strong's continuing and valuable efforts to inventory legal capacities³⁶ and Irwin Rutter's insights into the distinctions between the lawyer's "operations" and his underlying "skills."³⁷ More recently, the growth of clinical legal education and the increasing interest of law teachers in the applications of psychology and learning theory have opened promising new perspectives on the law school's potential for training in legal skills and professional roles.³⁸

Another area of slow but steady growth in the curriculum has been the increasing utilization of modern technological teaching aids, such as programmed learning,³⁹ videotape and other audio-visual devices,⁴⁰ and computer simulation.⁴¹ Although use of these

the development of casebooks and other law teaching materials, with a view toward highlighting the major intellectual and pedagogical developments in law teaching. This project would also serve as a prologue to intensive study of different teaching methods. For previous analyses of teaching materials used in law schools, see Currie, *supra* note 8; Mazor, *The Materials of Law Study: 1971*, in PACKER & EHRLICH 319.

³⁵ Llewellyn, *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345 (1945).

³⁶ See Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL ED. 226 (1973). This article represents a major advance from an earlier valuable effort. See Strong, *Pedagogical Implications of Inventorying Legal Capacities*, 3 J. LEGAL ED. 555 (1951). For a description of the Ohio State law curriculum based on skills training, see Strong, *A New Curriculum for the College of Law of the Ohio State University*, 11 OHIO ST. L.J. 44 (1950).

³⁷ See Rutter, *A Jurisprudence of Lawyers' Operations*, 13 J. LEGAL ED. 301 (1961).

³⁸ See, e.g., Bellow, *supra* note 20; Redmount, *A Conceptual View of the Legal Education Process*, 24 J. LEGAL ED. 129 (1972); Watson, *Reflections on the Teaching of Criminal Law*, 37 U. DETROIT L.J. 701 (1960); Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968).

³⁹ For a concise description of Charles Kelso's pioneering work on programmed instruction in law, see Trubow, Book Review, 18 J. LEGAL ED. 225 (1965). One of the earliest efforts in this area is an impressive program on the rule against perpetuities prepared by Robert J. Lynn of Ohio State University in 1963 for the use of his law students. It is a document of 320 pages consisting of 621 frames and remains one of the best programs in the law teaching field.

⁴⁰ See, e.g., Dresnick, *Uses of the Videotape Recorder in Legal Education*, 25 U. MIAMI L.

devices is still uncommon in the law schools, the success of a number of pilot projects indicates that these innovations will gradually become more widely used. At the same time, more law teachers believe that effective classroom performance is not solely a matter of innate talent or intellectual endowment, but rather is a skill that can and should be enhanced through structured learning experiences. For this reason summer teaching clinics are an increasingly popular activity for younger law teachers.⁴²

Perhaps the greatest ferment in curricular thinking today centers around the group of law teachers and behavioral scientists—virtually a new “school” of legal education—who are attempting to apply learning theory and other psychological principles to the law school experience.⁴³ Although the recent writings in this area do not lend themselves to easy summary, several basic principles are frequently stressed. First is the notion that law teachers must develop a greatly enhanced awareness of the motivations and emotions of both students and faculty that permeate the learning environment. The social dynamics of role adjustment, the *REV.* 543 (1971); Kornblum & Rush, *Television in Courtroom and Classroom*, 59 *A.B.A.J.* 273 (1973).

⁴¹ See, e.g., Degnan & Haar, *Computer Simulation in Urban Legal Studies*, 23 *J. LEGAL ED.* 353 (1970).

⁴² See generally Strong, *supra* note 36.

The Association of American Law Schools (AALS), under grants from the United States Office of Education, has held three summer Law Teaching Clinics for younger law teachers. A total of 174 law teachers has participated. Detailed reports on each of these clinics are on file at the office of the Association in Washington, D.C. Shorter summaries are available in the 1969, 1971, and 1973 Proceedings of the AALS as reports filed for the clinic's Advisory Committee by its chairman, Dean Richard G. Huber. See generally, Kelso, *Teaching Teachers: A Reminiscence of the 1971 AALS Law Teachers Clinic and a Tribute to Harry W. Jones*, 24 *J. LEGAL ED.* 606 (1972).

Since 1967, a summer program designed to introduce law teachers to social science techniques and methodology has been in operation under the auspices of the Association of American Law Schools and the Law and Society Association. This summer Institute on Social Science Methodology and Legal Education, known as SMILE, has been funded by the Walter E. Meyer Research Institute of Law, the Danforth Foundation, and the National Science Foundation.

A summer program designed to familiarize law teachers with economic theory and its application to legal problems has been conducted at the University of Rochester under the direction of Professor Henry G. Manne.

All three programs have been highly successful.

⁴³ See generally J. BRUNER, *TOWARD A THEORY OF INSTRUCTION* (1966); Bellow, *supra* note 20; Josephson, Report on Teaching and Learning Law (mimeograph, Dec. 27, 1972); Redmount, *supra* note 38; Rutter, *supra* note 37; Stone, *Legal Education On the Couch*, 85 *HARV. L. REV.* 392 (1971); Strong, *Pedagogical Implications of Inventorying Legal Capacities*, *supra* note 36; Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 139; Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38; Letter from Robert C. McClure to Roger C. Cramton, April 25, 1973 (on file at the Cornell Law Review).

psychological process of identification and the function of teachers as models, the motive force of anxiety and aggression, and the inherent rewards of learning have all been suggested as useful analytical constructs in understanding the classroom environment.

Another major concept is that learning proceeds most efficiently when the goals of the enterprise are clearly articulated at the outset, and students are given adequate and timely feedback which enables them to evaluate their progress toward those goals. As a corollary to this proposition, the learning experience should be structured so that knowledge, skills, and concepts build upon one another in an orderly progression of increasing difficulty and complexity. Finally, attention is directed to the processes by which students master and retain material, such as the function of repetition and practice, the role of "structure" and "substance" in learning, and the effects of "real world" responsibility such as clinical programs and law review work. Although some of these concepts are neither new nor startling, and uncritical acceptance of psychological dogma may give rise to justifiable skepticism, this body of thought in the aggregate is likely to have major effects upon the future shape of the law curriculum.

It is doubtful that any program of studies, however well designed or funded, could provide direct, authoritative answers to these major curriculum issues. What does seem feasible is a series of studies—including historical inquiry, systematic data collection, opinion surveys, and intellectual analysis—designed to produce a body of useful data and argument to assist those who must make curricular decisions. The focus should be on illuminating the processes and effects of legal education on law students as they progress through law school and the early years of practice, with a view toward demonstrating which aspects of legal education are valuable and effective, and which aspects seem to be in need of improvement.

Adopting this frame of reference admittedly tends to exclude several different types of studies on legal education which are at least potentially of great value. For example, it would doubtless be useful and interesting to approach legal education from an organizational perspective, studying the law school as an institution populated by many discrete groups with differing perceptions, goals, and incentives which interact in a complex series of relationships. Contrasting the existing structure of legal education with different intellectual models of educational institutions could provide useful insights, and might suggest alternative organizational forms

through which its goals could be accomplished. Another possible approach would be an experimental methodology which employed matched groups of students or teachers to determine whether various changes in educational practice would produce observable results in an experimental group that differed markedly from effects occurring in a normal or "control" group. It could also be useful to make intensive studies of law schools that have organizational structures which are markedly different from the typical American law school, such as those that are heavily involved in interdisciplinary programs, or those having all faculty members involved in clinical legal education, or those attempting to integrate the law school more fully into the rest of the university community.

In part, the focus emphasized here—the processes of legal education and the effects that these processes have on students and teachers—is a response to practical factors such as the definition of the task initially formulated by the ABA Special Committee, and the strengths of the American Bar Foundation as a research institution. But it also rests upon a belief about the probable nature of change in legal education. It seems likely that reform and innovation in established institutions like the law schools will be a gradual and incremental process, reflecting the net results of innumerable individual decisions by legal educators and administrators rather than dramatic restructuring. Better understanding of the processes and effects of present-day legal education should have direct and immediate relevance to this decision-making.

This perspective suggests several major categories of studies on legal education. The first area of interest is the experience of law students from admission to graduation: what are they like when they go to law school, and how are they affected by the intellectual, professional, and emotional processes of legal education? Another obvious subject for study is law teachers. Because they are a dominant element in legal education, it is desirable to explore their qualities, characteristics, goals, techniques, and motivations. Studies of legal education should also extend beyond the law school years to encompass the transition from law student to lawyer. The initial years after graduation may greatly influence the law graduate's adjustment and performance as a lawyer; moreover, scrutiny of these early practice experiences may provide a firm basis for testing prevailing assumptions about the content and duration of legal education. Finally, any effort to change what is in need of improvement or to preserve what is good in legal education will inevitably confront some harsh economic facts about the

costs of higher education today and the ability of prospective law students to bear those costs without public support. Thus, a realistic program of research must include an inquiry into the economics of legal education.

Despite the conceptual neatness of this framework, it is obvious that neither existing knowledge nor future research priorities can be so readily divided into well-balanced compartments. By far the greatest amount of prior research has been devoted to law students, particularly to their backgrounds, characteristics, and motivations for attending law school. In part, this is attributable to the longstanding efforts of the Law School Admission Council and the Educational Testing Service to improve the methods of and criteria for evaluating and selecting law students. In addition, the relatively greater knowledge available in this area results from broad-based studies of all college graduates, studies which included many who intended to become law students.⁴⁴

Although this relatively extensive research on law students has provided a number of interesting findings and intriguing hypotheses, we doubt that studies in this area should be given priority today. Although useful work remains to be done on law student motivation and selection, our greater ignorance concerning law teachers, the professionalization process in law school and the early years of practice, and the economics of legal education suggests that these areas of research are more promising and urgent. Indeed, if the criterion for studies is whether a particular kind of knowledge will have a direct and immediate effect upon the future development of legal education, then research on the economics of legal education would probably be first on the agenda. Further discussion of the priorities for studies on legal education will be postponed until we have examined in more detail the findings of past research and the nature of future projects that might be undertaken.

III

CHARACTERISTICS AND EXPERIENCE OF LAW STUDENTS

Because students are the primary "consumers" of legal education and constitute the future personnel of the profession, a review of research on legal education appropriately begins by asking what

⁴⁴ See, e.g., L. BAIRD, *THE GRADUATES: A REPORT ON THE CHARACTERISTICS AND PLANS OF COLLEGE SENIORS* (1973) [hereinafter cited as BAIRD]; S. WARKOV & J. ZELAN, *LAWYERS IN THE MAKING* (1965).

effects law school has upon those who attend. A host of subsidiary questions are implicit in this broad inquiry: Who goes to law school, and why? What qualities and characteristics do they bring with them, and how do they react to the faculty and their fellow students? What are the intellectual, emotional, and sociological forces that constitute the law school experience? How do the students spend their time in law school? Are their careers shaped by accident or design? Are there vast differences or great similarities in the content and style of legal education at different law schools? A substantial body of information relevant to these crucial questions has already been gathered, but on balance it is more tantalizing than conclusive.

A. *The First Step: Building a Data Base*

In order to highlight significant changes in the composition of law school classes and to provide a basis for designing samples for later studies, a large-scale program of empirical research on law students must begin with an adequate data base. Thus, data on the socioeconomic status of law students would help determine whether the traditional notion that the law school serves as an avenue of upward mobility is valid today. At the same time, such data would enable researchers to study matters such as the relationship between students' social backgrounds and their reactions to law teaching, or their motivations for going to law school, or any number of other factors.

The background variables likely to be useful for these purposes may be classified in several broad categories. First are the factors relating to equality of opportunity to enter the profession, areas where discrimination has traditionally been a problem in this society: sex, race, socioeconomic status, and religion. Other inquiries are addressed to the intellectual and academic qualifications of law students, such as LSAT scores and college grade-point averages, undergraduate major, and participation in college extracurricular activities. Complementary variables that might be considered are those indicative of a student's maturity, such as age, marital status, children, and interruptions of academic career for work or military service. Geographical considerations also have some significance in legal education, as indicated by the common belief that there are valid distinctions between "regional" and "national" law schools. Thus, it may be valuable to generate data describing the state-to-state migrations of students, and the proportions of law students who grew up in rural, suburban, or urban

areas. Finally, financial considerations continue to be a dominant concern in legal education, and aggregate statistics on the sources on which students depend to meet the expenses of law school would be valuable.

Only a few studies have attempted to provide statistical information of this nature. A study of the class of 1961, *Lawyers in the Making*,⁴⁵ was the first major effort to create a composite portrait of law students. This study was substantially repeated a decade later and the preliminary results, which are not limited to law students, have been published under the title *The Graduates*.⁴⁶ Another recent major effort is Robert Stevens's provocative series of pilot studies relating to students and alumni of several law schools.⁴⁷ There have also been several less ambitious empirical studies of law students' backgrounds, usually dealing with very small samples and relatively limited variables.⁴⁸

In the aggregate, these studies provide an interesting, but somewhat confusing and contradictory, picture of present trends in the law student population. For example, there seems to be little doubt that law students tend to come from families of very high socioeconomic status, even when compared to students who are planning to attend other graduate schools.⁴⁹ However, it is not

⁴⁵ S. WARKOV & J. ZELAN, *supra* note 44.

⁴⁶ BAIRD. The research for this report was cooperatively sponsored by the Association of American Medical Colleges, The Graduate Record Examinations Board, and the Law School Admission Council.

⁴⁷ Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973) [hereinafter cited as Stevens]. The schools involved in the Stevens study are all of above-average quality, which suggests that his findings may not be applicable to the entire law school universe.

⁴⁸ See, e.g., R. Meile, *Performance and Adjustment of First Year Law Students*, July 13, 1961 (Ph.D. dissertation, University of Washington); J. Shultz, *Law Schools and the Differentiation of Recruits to Firm, Solo, Government and Business Careers*, August 1969 (Ph.D. dissertation, University of Chicago).

⁴⁹ E.g., BAIRD 26:

The socioeconomic status (SES) of students' families, as measured by parental education and income, was related to students' plans. On each measure, students who planned to work, marry or enter the military service tended to come from relatively low SES families, prospective graduate students from slightly higher SES families, and prospective law and medical students from the highest SES families.

This finding was consistent with prior research, which was summarized in the following terms:

Social scientists have found ". . . enormous differences in educational opportunities among the various socioeconomic groups and between the sexes. These differences are great regardless of what socioeconomic indices are used and regardless of how restrictively or broadly opportunity for higher education is defined. . . ." The effects of "background" can be seen in students' probability of attending college, the types of college they attend, the majors they choose, the college residences they live in, the way they adjust to college, the time they take to graduate, and whether they will withdraw or not. . . . Studies of post-graduate choices . . . have also shown that

clear whether this is a new development caused by the admissions pressure of recent years or whether law schools have always drawn from the elite of the population. Stevens infers from his data from a limited sample of schools that the socioeconomic bias of the law student population is becoming more pronounced,⁵⁰ while the researchers in *The Graduates* indicate that it is remaining constant as income and education levels in the society as a whole go up.⁵¹

Analysis becomes considerably more complex when one adds in the variables of sex and race. According to *The Graduates*, sexual role differences seem to have a more profound influence than race on students' plans to study law. Thus, in the class of 1971, more than seven percent of the national sample of college men planned to study law, while only a little more than one percent of the women contemplated entering law school.⁵² By contrast, black

students' backgrounds continue to affect their decisions, although the size of the effect is much less

Id. at 22.

⁵⁰ Stevens 573:

Even allowing for inflation the schools we studied appear to draw students from more affluent families than in the past. At U.S.C., only five percent of the 1970 class came from families with incomes under \$10,000; in 1960, a majority of all graduates came from this group. This change is not unique. The other schools exhibited at least some decline in the percentage of low income students. At the same time, the percentage of students from families with incomes of at least \$40,000 increased at all schools during the ten year period. . . .

The students sampled appeared to come from better educated, as well as richer, families than in the past. . . . To some extent these changes reflect the rising level of education in the nation; yet they may also suggest that the schools studied drew their students from increasingly elite family backgrounds.

⁵¹ *E.g.*, BAIRD 32:

[W]ith all the changes in the country and higher education, the seniors with different choices look very much like the seniors of ten years ago. . . . Each field seems to be getting the same kind of students it got ten years ago.

See also *id.* at 201 (emphasis in original):

[A]lthough it is true that more students from lower class backgrounds are attending college, the general level of education in the society has risen, so that, in fact, the average senior in our sample had better educated parents than the senior of earlier years.

As the latter quotation indicates, a general rise in the socioeconomic status of law students would not necessarily indicate that fewer lower class students were entering law school; instead, it could be that a greater proportion both of very high and of very low status students were entering law school, with the "highs" more than offsetting the "lows" to create an upward trend. Obviously, if one is concerned about making the law student population broadly representative of the society, a detailed background by individual socioeconomic class is much more informative than aggregate figures alone.

⁵² See *id.* at 18. This difference probably was not attributable to the demands of home and family, because fewer than 5% of the women expected to be full-time homemakers after graduation. *Id.* at 98-99. On the other hand, home-related duties may have a more significant impact than this figure would suggest: over 75% of the men planning some form of postgraduate education, but only 58% of the women, planned to study full time. *Id.* at 101. If it is true that responsibilities of home and family make it more difficult for women to

seniors of both sexes were only slightly less likely than whites to plan careers in law.⁵³ In one respect, this latter figure seems surprising, since black college seniors were somewhat more likely than whites to plan some form of postgraduate education.⁵⁴ One might well have expected that the black students in the sample would be considerably less likely than their white counterparts to enter law school because two-thirds of the black students in the sample were women⁵⁵ and the socioeconomic status of the black students was generally significantly lower than that of the white students.⁵⁶ Perhaps the lower socioeconomic status of the black students ought not to be given as much weight as the aggregate figures suggest, however, because Stevens found that the black law students in his sample, although disadvantaged in comparison to white students, were members of a socioeconomic elite relative to black families nationally.⁵⁷

Many other intriguing questions and hypotheses for further study have been suggested by recent research on law students: the apparent shift from a preponderance of humanities majors to students schooled in the social sciences,⁵⁸ the tendency noted by

devote full time to academic work, then the law schools' emphasis on full-time legal education may in effect be a barrier to women.

Undoubtedly a more direct deterrent for women considering legal careers is the belief that they will be victims of discrimination. More than one-half of the women, and over one-third of the men surveyed in *The Graduates*, believe that women are discriminated against in law school admissions policies. *Id.* at 103. That this was once the case at many schools is undeniable, but impressionistic evidence suggests that discrimination against women in law school admissions no longer exists.

⁵³ Of the black seniors surveyed, 3.8% reported that they planned to enter law school the following year; for white students, the figure was 4.8%. *Id.* at 18.

⁵⁴ *Id.* at 30.

⁵⁵ *Id.* at 130.

⁵⁶ *Id.* at 131-33.

⁵⁷ Stevens 600-01.

⁵⁸ Stevens concluded from his small sample of above-average law schools that [i]n the law school Class of 1960, . . . the highest percentage of college majors in each law school except U.S.C. consisted of those majoring in "humanities and arts." By 1970, the numbers majoring in social sciences had doubled to more than a majority. When one considers that the law students of the late fifties were predominantly humanists, while those of the late sixties were "soft" scientists, it becomes possible to speculate more intelligently about the changes in intellectual approach of law students.

Id. at 575. There have also been a few studies which have attempted to shed some light on the perennial problem of whether some undergraduate courses or major field of study are better preparation for law school than others. One such study, dealing with students entering the University of Washington Law School during an eight-year period, found that [t]here were no differences in law grades as a function of major field with one exception: students from the atypical, "other" category [which included forestry, social work, art, music, journalism, education, and the like] had a disproportionate number who did unsatisfactory work in law.

Stevens toward increasing homogeneity of the student bodies at the elite law schools,⁵⁹ the influence of religious background on career plans,⁶⁰ the relationship of age or marital status to law school performance,⁶¹ the possibility that law students are increasingly the

Lunneborg & Lunneborg, *Relations of Background Characteristics to Success in the First Year of Law School*, 18 J. LEGAL ED. 425, 430-31 (1966). When the researchers focused on particular undergraduate courses in which the law students had either excelled or failed, they found that "[o]f the courses-excelled-in, only economics yielded significant differences in the predicted direction" of greater success in law school; at the other end of the spectrum, students who had failed in biology, chemistry, and mathematics "failed their first year of law at a far greater rate than other students." *Id.* at 430. Beyond this, there were no significant correlations between law school success and undergraduate course experience outside of overall grade-point average.

⁵⁹ See Stevens 573.

⁶⁰ The researchers in *The Graduates* noted that [s]tudents who were raised as Protestants were most often found among the students not planning further education and least often found among prospective law students. Roman Catholics were represented to about the same degree in all groups. Jewish students were less likely to be found among students who planned to work, marry or enter the military service, and more likely to be found among students who planned advanced study, particularly in law and medicine.

BAIRD 28. Stevens noted that the law schools he studied "appear to have become less concentrated in terms of religious background" between 1960 and 1970, and that the students in his sample "increasingly rejected their parents' religious beliefs in favor of atheism and agnosticism." Stevens 573-74. Stevens also found significant correlations between students' religious beliefs and their motivations for coming to law school. See *id.* at 612. Religious differences also seem to persist into the career patterns of practicing lawyers. For example, one study of the Detroit bar found that "sixty-nine percent of all the firm lawyers come from Protestant homes, while exactly the same proportion of the solo lawyers come from Catholic and Jewish homes." Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127, 130-31 (1963). Of course, religious background may be highly associated with ethnic or socioeconomic factors that are the underlying variables.

⁶¹ The researchers in the University of Washington Law School study found that age was significantly correlated with first-year success in law school, in that students over 25 years old were more likely to fail their first year of law study. Although interruptions of the academic career between college and law school did not seem to influence first-year law grades, length of delay between high school graduation and college graduation was significantly correlated with law grades. See Lunneborg & Lunneborg, *supra* note 58, at 432. This study, of course, does not reveal whether age is a matter of independent significance or whether it merely serves as a surrogate for a more determinative factor.

The researchers in *The Graduates* noted that marriage has some dampening effect on the study plans of both men and women, but married women are only half as likely as unmarried women to anticipate a doctor's degree while married men are less apt to lower their aspirations. Marriage for women is a particular deterrent to immediate study in law or medicine

BAIRD 123. For students who do enter law school, marriage does not seem to have a significant effect on academic performance. For example, the University of Washington study concluded: "Marital status was not related in any meaningful way to law school achievement. Single students, marrieds without children, and marrieds with children, regardless of number, performed equally well." Lunneborg & Lunneborg, *supra* note 58, at 433. There are also some fragmentary indications that marital status has little effect upon success in practice. The University of Michigan Law School has been compiling profiles of alumni ten years after graduation and comparing the "high earners" in each class with the

product of suburban environments rather than large cities,⁶² and the effect of financial considerations on law students' career decisions.⁶³ Definitive research in these areas, however, will require a much better data base than is currently available. What is needed for a comprehensive program of research relating to the characteristics and attitudes of law students is a statistical information system, preferably computer-based and capable of supporting a variety of different research strategies.

An ideal statistical system of this nature would have to meet exacting criteria. First, it should function on a continuous basis, probably annually or at least in much shorter periods than the ten-year gaps that have separated the previous major surveys. Like most major institutions, the law schools today are experiencing rapid changes, and significant developments among the law student population should be discovered before they become history.⁶⁴ Moreover, in light of the imperfections in our knowledge and the potential for multiple uses of the data base, the information system should be as comprehensive as possible in its coverage of law students—ideally, a census of the entire law student population. The system should also have the capability of following law students forward in time through their early years of professional

remaining alumni. Typically, there is very little difference between the "high earners" and the others with respect to marital status at the time of entering law school, being married while in law school, or current marital status. *See, e.g.,* Michigan Law School Alumni Survey, Class of 1957, at 17 (mimeograph 1972) (on file at the *Cornell Law Review*).

⁶² *See* Stevens 574:

Our study confirmed that most lawyers have urban origins. . . . Yet at all the schools except Iowa, students were increasingly drawn from suburban areas. At Yale, for example, 46 percent of the class of 1972 were products of the suburbs, compared with 33 percent of the class of 1960.

⁶³ The effects of financial burdens may be more complex than one would suspect. *See, e.g.,* BAIRD 30:

[S]tudents from relatively poor and wealthy families planned to attend graduate school to about the same extent. The richer students were more likely to plan to attend a professional school and less likely to plan to work. To some degree these differences may be due to the wealthier families' ability to pay the tuition of professional schools, but it is probably also due to their interest in the well-paying professions.

The researchers also found that "the amount students had borrowed as undergraduates and the amounts remaining to be paid were very similar for students who planned to continue their educations and those who did not." *Id.* at 71, 73.

⁶⁴ For example, the sharp shift over the past decade in law student undergraduate majors from humanities to the behavioral sciences (*see* note 58 *supra*) would have been useful to know about as it was happening because this development could sharply influence teaching methods and curriculum offerings. Another area in which up-to-date knowledge seems necessary is the representation of women and minority groups in law school classes. Although Stevens concluded that there was little change in women and minority enrollments between 1960 and 1970 at the schools he studied (*see* Stevens 571-72), it is well known that this condition has changed considerably at many schools in the past few years.

work experience, in order to develop an accurate picture of the career paths that law graduates follow.⁶⁵ The requirement of updating the data for analysis of changes over time, and generating samples for other studies, indicate that the individual respondents would have to be identifiable for these purposes, although not for all purposes. Identification should also include the law school which the student is attending, since it would clearly be desirable to investigate differences in student characteristics at different law schools.⁶⁶ Another desirable feature would be compatibility with existing data-gathering systems relating to lawyers and law schools, such as Educational Testing Service programs, the American Bar Association's annual questionnaires to law schools, and the Martindale-Hubbell Law Directory.

Finally, and not to be overlooked, any large-scale statistical information system must be designed with adequate safeguards for the privacy and confidentiality of personal information.⁶⁷ Most of the categories of information described above would not be considered sensitive by the average observer. However, matters such as family income, religious preference, or LSAT score may legitimately be considered private by some individuals, and the quality or implications of a given bit of information may change over time. For example, information freely given by a law student may take on quite a different aspect if the respondent later becomes a candidate for public office.

Several basic steps can be taken to minimize privacy problems associated with a statistical information system. Clear rules should be formulated governing the uses to be made of the data and the persons allowed access to it, and these rules should be communicated with precision to those who are asked to supply personal information. The voluntariness of participation should be emphasized, particularly in coercive situations such as when a law

⁶⁵ Stevens concluded, on the basis of his small sample of schools, that "[g]raduates of different schools follow different career patterns, settle in different places, join firms of different sizes, earn different incomes, use different skills, and concentrate on different specialities." Stevens 569. However, he was careful to point out that "[t]he narrowness of our sample points to the need for broader studies providing reliable information for the whole profession." *Id.*

⁶⁶ Creating stratified samples of law schools promises to be a complex and frustrating process, because even familiar categories such as "regional" and "national" law schools are difficult to define with any precision. An interesting discussion of a research methodology for classifying law schools on the basis of their resources is contained in C. KELSO, *THE AALS STUDY OF PART-TIME LEGAL EDUCATION* 34-44 (Final Report May 1972).

⁶⁷ See generally Miller, *Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information-Oriented Society*, 67 MICH. L. REV. 1089 (1969).

school gathers information from its students.⁶⁸ Effective procedural and technological safeguards can be built into the system, such as physically separating identifying information from the raw data except when it is necessary to identify individuals for updating or sampling,⁶⁹ and using computer programs that produce only aggregate data during normal operations.⁷⁰

Although the creation of this statistical information system would be ambitious and expensive, it appears to be necessary. There are significant potential economies of scale in building a comprehensive statistical system for the legal profession. The existence of good, readily usable data could serve as a magnet for talented social scientists interested in research on the profession. Without a broad data base, virtually every research project would have to repeat the laborious process of creating a sample from scratch, and the result would be either a waste of resources or, more likely, a continuing series of "pilot studies" plagued by inadequate samples and dubious findings.

B. *Reasons for Coming to Law School*

Although a basic statistical information system would provide a detailed portrait of those attending law school, additional research is needed to reveal why they come. Before considering possible motivating factors, however, it is necessary to ask whether entering law students really have much information about the true nature of law school and the legal profession: are they making these decisions on the basis of a sound understanding of what it means to become a lawyer, or are they reacting to popular mythology, fictionalized media portrayals, and fuzzy impressions?

⁶⁸ Cf. *id.* at 1171-72:

Fortunately, there is a growing realization that the consent defense [to claims of invasion of privacy] is insensitive to the psychological pressures and the need for the material realities of modern life that often force individuals to disclose personal data. When information is "voluntarily" given in the context of a police interrogation, an application for welfare payments, an employment relationship, or a psychological experiment, a variety of complex factors may have combined to subvert the subject's freedom of choice. . . . Although a great deal obviously depends on the circumstances surrounding the disclosure and the individual's personal characteristics, in many of these situations "consent" is simply a conclusory epithet that serves to place responsibility for invasions of privacy on the victim.

⁶⁹ *Id.* at 1216:

When it is essential to identify an individual for purposes of updating the data, some protection can be secured by assigning each respondent an arbitrary identifying number. The data can then be divided into a "substantive deck" for normal statistical use, which would contain the data along with the arbitrary numbers, and an "identification deck," which is needed to link the individual to his code number in order to make a new entry in his data.

⁷⁰ *Id.* at 1216-17.

The most extensive data on this point is contained in *The Graduates*,⁷¹ which reported that the two most significant sources of career information for prospective law students were "advice from friends or relatives" and "advice from parents"; next in importance was "advice from a professional in the field" other than a college professor.⁷² Six other sources were of roughly equal, but relatively minor, significance: directories or guides, publications by the Educational Testing Service, advice from college counselors, schools that the respondent had applied to, law school admissions offices, or career advisors.⁷³ In short, the law recruits, in common with other college seniors, had a pronounced tendency "to seek advice from other people rather than from impersonal sources such as directories."⁷⁴ This could be a useful concept in considering efforts to provide equal opportunities for minority groups. If black students, for example, are unlikely to have parents, friends, or relatives who are lawyers, they may be at a marked disadvantage in evaluating the desirability of legal careers.⁷⁵

Although these findings from *The Graduates* suggest a rational, if imperfect, information-gathering process, a somewhat different picture emerges from a study made with a sample of law students from a single law school.⁷⁶ The most influential source in forming

⁷¹ BAIRD 70. The research instrument used in this portion of the study was a questionnaire with ten preselected possible sources of information on graduate study plans. All figures used in this section of the Article are aggregate percentages of those responding that a given source was either "very important" or "important."

⁷² Approximately 60% of those considering law school ranked advice from parents or friends and relatives as being either "important" or "very important." "Advice from a professional in the field" was considered significant by 44% of the law recruits. *Id.* at 70.

⁷³ Approximately 20% of the prospective law students considered each of these sources significant. The least effective of all the information sources was a "visit from someone recruiting for a school," which was important to only 10% of the law recruits. *Id.*

⁷⁴ *Id.* at 71.

⁷⁵ Some indirect corroboration for this point is provided by Stevens's study. In discussing student motivations for entering law school rather than sources of information, he observes:

Since blacks are underrepresented both in the legal profession generally and in our sample, it is hardly surprising that none of the black students admitted to any familial influence in deciding to study law. On the other hand, 24.2 percent of the white students said that having a lawyer in their family was of either "some" or "great" importance in reaching their decision. In addition, 8.6 percent of the white students, but none of the black students, accorded "some" or "great" importance to the chance to work with members of their family.

Stevens 615.

⁷⁶ Little, *Pawns and Processes: A Quantitative Study of Unknowns in Legal Education*, 21 J. LEGAL ED. 145 (1968). It should be noted that the author of this article makes no claims that his findings are statistically significant. See *id.* at 147-48 n.6. In addition, the study is distinguishable from *The Graduates* because it sought information about students' knowledge of lawyers and their work, rather than their knowledge about law schools and law study.

these students' impressions of lawyers was "common knowledge (conversations with friends, etc.)," which seems generally consistent with *The Graduates*. However, both "the news media" and "movies, books, [and] television programs" were described as "important" by almost a third of these students.⁷⁷

More extensive research in this area could have great practical value. If substantial numbers of prospective law students have only a hazy or distorted notion of what they will encounter once in law school and in practice, it could mean that the law schools not only are enrolling students who have come for the wrong reasons, but also are losing good people who might be attracted to law if they had a better understanding of its nature. Moreover, even if many of the students who come to law school with seriously mistaken conceptions do accommodate themselves to the realities, it is quite possible that they suffer needless difficulties of adjustment and impaired performance as a result of their lack of information.⁷⁸ Better information can benefit both the profession and prospective students, and better knowledge of the sources that students rely on can suggest the most effective ways to provide such needed information.

Determining what information students have about law schools and legal careers is merely a prologue to the principal question of how they make the decision to study law. Human motivations are complex, subtle, and often conflicting, and the reasons underlying a major decision like the choice of a career are particularly difficult to unravel. For a single individual the decision to enter law school may reflect a mixture of selfish and altruistic impulses, of nebulous or poorly articulated feelings and very specific goals, and of short-range perceptions of the rewards of law study and long-range plans which treat law school as an instrumentality to other ends. Indeed, a professed motivating factor may be more of a rationalization than an explanation. Notwithstanding the complexities of assessing motivations, prior studies have developed useful generalizations concerning certain common patterns of motives.

Perhaps the most obvious, if not the most noble, reason for studying law is the rewards that society accords members of the profession in the form of high earnings and prestige. Both Stevens's studies and *The Graduates* suggest that these "status-seeking" motivations are quite important to law students, even by

⁷⁷ These media sources were slightly more important than "personal contact with lawyers." *Id.* at 152-53.

⁷⁸ See text accompanying notes 164-68 *infra*.

comparison to graduate students in other fields.⁷⁹ As one might expect, the student's socioeconomic class and other characteristics seem to affect his perceptions of material rewards.⁸⁰ However, there are some indications that these statistics should not be accepted uncritically. Stevens also found that the importance attributed to money and prestige varied significantly even among the elite law schools in his sample, and that these differences were apparently increasing in the decade between 1960 and 1970⁸¹—a rather surprising tendency, in light of his conclusion that the students at the sample schools generally tended to become a more homogeneous group in this period.⁸² Furthermore, changes in

⁷⁹ Stevens found a relationship between financial and prestige motivations to the extent that "students motivated by a desire for prestige were likely to attribute similar importance to money as a motivating factor in their decision about law as a career . . ." Stevens 622.

Among the 23 possible reasons for coming to law school contained on Stevens's questionnaire, "prestige of the profession" ranked seventh and "financial rewards" ranked ninth in percentages of law students from the Class of 1970 reporting that this factor was of "great importance" to them. *Id.* at 618. Similarly, 67% of the law school recruits surveyed in *The Graduates* indicated that the desire to "improve chances of receiving a good salary, promotions, etc." was an important factor in deciding to attend law school, and 60% emphasized "greater prestige." By contrast, slightly less than one-half of the medical school recruits attributed importance to these factors. See BAIRD 81.

⁸⁰ See Stevens 611-12:

[T]he prestige and potential financial rewards of the legal profession attracted a disproportionate number of white males with conservative political outlooks. White students as a group attributed significantly greater importance to prestige as a motivation than did the black students. . . . However, blacks and whites placed about equal importance on money as a motivating factor.

. . . Over one-half of the women in our sample . . . said that a desire for financial rewards had been of no importance in their decision to enter law school, while only 13.6 percent of the men attributed no importance to this factor.

Status-seeking motivations had no significant correlation with parental income but did vary with the respondent's religious affiliation.

⁸¹ See *id.* at 577-78:

"The desire for financial rewards," always relatively low in importance among reasons for attending Pennsylvania and Yale, fell slightly at the two schools during the decade At Iowa and U.S.C. the pattern was noticeably different. During the 1960's the importance of money as a reason for entering these schools apparently increased. . . . At Yale and Pennsylvania prestige appears of less importance [in 1970] than it was in 1960. Yet, as in the case of monetary reward, the reverse appears to be true at Iowa and U.S.C.

It is interesting to compare these findings with the results of a recent survey of Chicago-area law schools, which sought information about students' anticipated income levels:

The national law school students' desired income levels are substantially the same as those of the local school students, although the local students anticipated long-range incomes that run a bit higher than those expected by the national students. Overall, the respondents expect to make higher than normal salaries.

Comment, *A Survey of Chicago Law Student Opinions and Career Expectations*, 67 Nw. U.L. REV. 628, 640 (1972).

⁸² For example, Stevens notes that the student bodies at the sample law schools became more like each other with respect to socioeconomic status, religious affiliation, increasing percentages of students from suburban areas, and high school and college backgrounds. Stevens 571-74.

social attitudes may inhibit an individual's willingness to admit a desire for financial gain, even though the motivation remains strong. In a few studies, for example, students who professed to be motivated primarily by reformist concerns, such as aiding the underprivileged or attempting to reform society, still anticipated high incomes.⁸³ At the least, it appears that many regard law as a profession where one can "do good while doing well."

Perceptions of the prestige associated with the legal profession may also merit more sophisticated study. Previous researchers have not attempted to provide specific content to the concept of prestige; yet it may well be that different people would emphasize different aspects of the lawyer's role as conferring respect, such as high earnings, leadership positions in the community, the ritualistic functions associated with the profession ("mystique of the law"), and the opportunity to help people in trouble. Tentative efforts to explore law students' self-image in relation to other groups have been attempted, but the samples have been too small and the findings too conflicting⁸⁴ to support meaningful generalizations.

Another important group of motivations relates to the students' intellectual interest in law study and legal work. Prior studies suggest that intellectual motivations play a prominent role in the decision to study law.⁸⁵ However, there are also indications that

⁸³ For example, Stevens notes that "the schools with the most radical student bodies" were the ones at which students had "the highest expectation of future earnings." *Id.* at 634-35; see Comment, *supra* note 81, at 639-40. In one study, however, first-year law students appeared more willing to admit that "expected income" was an important factor in their decision to study law than to conclude that other people became attorneys because "they want to get rich." Campbell, *The Attitudes of First-Year Law Students at the University of New Mexico*, 20 J. LEGAL ED. 71, 72-73 (1967).

⁸⁴ One survey found that law students and undergraduates ranked the prestige of various occupations quite similarly, and that in both rankings lawyers were near the top of the prestige ratings. See Little, *supra* note 76, at 160-62. In another study, however, less than one-half of the freshman law students questioned believed that members of the legal profession were more honest than doctors, accountants, stockbrokers, butchers, or bartenders, and only a very slight majority thought lawyers were more honest than garage mechanics or insurance men. See Campbell, *supra* note 83, at 75-76.

It is interesting to speculate whether law students mirror society's mixed feelings about the lawyer's role. Cf. D. RIESMAN, *INDIVIDUALISM RECONSIDERED AND OTHER ESSAYS* 450 (1954):

Could the ambivalence toward law . . . be related to the possibility that the lawyer must do things the community regards as necessary—but still disapproves of? Hence, is the lawyer something of a scapegoat? . . . [Lawyers] are feared and disliked—but needed—because of their matter-of-factness, their sense of relevance, their refusal to be impressed by magical "solutions" to people's problems. Conceivably, if this hypothesis is right, the ceremonial and mystification of the legal profession are, to a considerable degree, veils or protections underneath which this rational, all too rational, work of the lawyer gets done.

⁸⁵ Stevens reports that "[o]ver 95 percent of the students in our sample indicated that

incoming law students attribute somewhat less importance to intellectual values than prospective graduate students in other disciplines.⁸⁶

The intellectual orientation of law students may have significant effects upon their performance in law school and after graduation, perhaps in subtle ways. One interesting pair of studies⁸⁷ found that students who were inclined toward "thinking" rather than "feeling"—that is, those who "like to arrive at decisions on an analytical, impersonal, logical basis" rather than "on the basis of appreciation, sympathy, and concern for others' rights"⁸⁸—were overrepresented in law schools as compared to undergraduate colleges, and were significantly less likely than the "feeling" individuals to drop out of law school. To a degree, of course, this merely corroborates common sense because law is a rational, analytical discipline; but it should be asked whether a profession concerned with providing service to clients who are often struggling with difficult circumstances should perpetuate a selection process which produces practitioners who are disinclined, relative to others in the population, to respond with sympathy and understanding to emotional conflicts. Two behavioral scientists have offered sharply conflicting views on this question, though apparently neither was familiar with this body of research. Psychiatrist Andrew Watson has argued that lawyers and law students often use "intellectualization" as a defense mechanism, effectively blinding themselves to their clients' emotional needs and failing to cope with their own emotions in ethical conflict situations.⁸⁹ Sociologist David

the desire for intellectual stimulation or interest in the subject matter motivated their decision to enter law school." Stevens 614. He also notes that women were slightly more likely than men to accord great importance to intellectual stimulation. *Id.* Black students were more likely to report that interest in the subject matter was greatly important to them, while whites were more likely to attribute great importance to intellectual stimulation. *Id.*

⁸⁶ Of the prospective law students surveyed in *The Graduates*, 66% indicated that "interest in learning more about my field" was an important factor in their decision to study law. By contrast, 84% of the prospective doctors, 87% of those bound for graduate biological or physical science departments, and 82% of those planning graduate study in social science indicated that this intellectual interest was important to them. BAIRD 81.

⁸⁷ EDUCATIONAL TESTING SERVICE, A FOLLOW-UP STUDY OF PERSONALITY FACTORS AS PREDICTORS OF LAW STUDENT PERFORMANCE (mimeograph 1967); Miller, *Personality Differences and Student Survival in Law School*, 19 J. LEGAL ED. 460 (1967).

⁸⁸ EDUCATIONAL TESTING SERVICE, *supra* note 87, at 79.

⁸⁹ See WATSON, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 113:

The possession of impressive intellectual capacities often causes excessive use of the defense of *intellectualization*. This is a psychological maneuver whereby persons relate to each other and themselves primarily through ideas, even when emotional matters may be more pertinent. While this device is useful for neutralizing anxiety, it is my impression that lawyers use it to an extensive and inappropriate degree. It

Riesman, on the other hand, has suggested that the lawyer's role is socially defined as analytical, detached, and rational, and that the capacity to disregard the emotional dynamics of a conflict situation is a desirable trait.⁹⁰ Regardless of which view one favors, a better understanding of the intellectual qualities and motivations of law students is clearly desirable.

Another set of motivations described by Stevens centers around the traditional image of the lawyer as a professional dedicated to ideals of service, high ethical standards, and problem-solving.⁹¹ Available findings indicate that these rather straight-forward values remain prominent among today's law students.⁹² A related, and also powerful, motivating force toward a legal career is the desire for independence, which was considered very important by more than one-half of the students in Stevens's sample.⁹³ This desire may find expression in legal careers in several ways, such as exercising power or control in important decisions affecting others,⁹⁴ avoiding repetitive work or narrow specialization,⁹⁵ becoming an individual entrepreneur rather than a

causes them to place too much emphasis on the verbal aspects of communication, and not enough on the feeling-content and connotations which are present.

See also Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, *supra* note 43, at 142-43:

Because dealing with professional and ethical problems is a painful and demanding task, most persons follow the human tendency to avoid such pain if and when they can. Thus, the mouthing or memorizing of ethical codes can provide a person with the "belief" that he has learned how to behave ethically, even while he is using such an exercise to avoid grappling with the core emotional issues.

⁹⁰ D. RIESMAN, *supra* note 84, at 459:

We must ask . . . whether it is really a good idea to train lawyers in psychology, if the effect of this is to make them more sensitive to their clients' moods and judgments? . . . If it is to break down the psychological defenses of the "secret society"? Perhaps the lawyer, or [a] certain kind of lawyer, has to be a person with a thick skin, not very interested in how other people feel or in how he himself feels?

To put this another way, if the lawyer should become very concerned with others' feelings, might he not become merely a competitor with another kind of client-caretaker, namely, the public relations man?

Riesman also observes that "the profession operates . . . to drain off some of the culture's more adept and avid reasoners, who might find themselves deviants if these careers were not open to them as external defenses and internal sublimations." *Id.* at 463. Thus, the lawyer "stands at once for reason and for an excess of it." *Id.*

⁹¹ See Stevens 612-14.

⁹² In addition to Stevens's findings (*id.*), data gathered for *The Graduates* indicated that 84% of prospective law students attributed importance to the fact that their "desired vocational field requires an advanced degree" in describing their decision to attend graduate school. BAIRD 81.

⁹³ Stevens 616.

⁹⁴ Stevens found a high correlation between "desire for independence" and "desire to handle other people's affairs," and considered this "a 'control' or 'power' component of independence." *Id.* at 619-20.

⁹⁵ Another motivating factor which closely correlated with a "desire for independence" in Stevens's studies was the desire for varied work. *Id.*

member of a hierarchy, or asserting and defending controversial ideas.⁹⁶ With the decline of the solo practitioner and the increasing bureaucratization of much legal work, those who choose law because they value independence may increasingly experience frustration.

A different group of motivations which has received much attention in recent years concerns the function of law as a means of social ordering—a mechanism for distributing rights, power, and influence among different social groups.⁹⁷ This interest can be manifested either as a reformist desire to “restructure society,” or as a more conservative propensity to facilitate the smooth functioning of the existing order by implementing accepted goals such as service to the underprivileged. Stevens’s work suggests that these motivations are greatly influenced by the individual’s background characteristics. For example, women were significantly more likely than men to express a motivation to change society or serve the poor; black students were almost twice as likely as whites to seek a restructuring of society; and in general there was a pronounced tendency for students from lower income groups to be more interested in serving the underprivileged.⁹⁸ If these motivational patterns persist through law school and affect the kinds of careers that individuals follow—a matter which should not be lightly presumed⁹⁹—motivational trends could have great influence on the

⁹⁶ Cf. J. Shultz, *Law Schools and the Differentiation of Recruits to Firm, Solo, Government and Business Careers*, August 1969, at 250-51 (Ph.D. dissertation, University of Chicago). One of the findings of this sociological study of a West Coast law school was that students who planned to practice in law firms rather than as solo lawyers

were less likely to subscribe to the core ideals of the classical profession having to do with individual responsibility. Their reward orientations did not emphasize independence from employers or clients. Compared to solo recruits they . . . tended to have business-like conceptions of the ideal attorney.

Id.

⁹⁷ Watson noted that lawyers are characterized by “concern with human justice.” See Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 94-95.

⁹⁸ See Stevens 613.

⁹⁹ The recent survey of Chicago-area law students found that “[t]hose students who conceive of themselves as ‘radicals’ do not seem much more willing to accept low salaries” than those who were less interested in social reform. See Comment, *supra* note 81, at 640. This study also confirmed the common belief that many law students will do a year or two of “poverty law” work before settling down to a traditional practice:

Thirty-one percent of the law students would prefer to do some legal aid work after graduation, but few of them wish to continue it throughout their careers. After two years, only twenty-three percent would continue to prefer this work, and only thirteen percent would still prefer it after five years.

Id. at 633. There were only small differences in desire to do legal aid work between the “local” and “national” law schools in this sample, even though the student bodies differed significantly in background characteristics. See *id.* at 635-39.

future of the profession and the "gatekeeping" role of the law schools. As Stevens observes, "law schools which really wish to provide more lawyers for the poor may have to consider excluding many students of affluent families."¹⁰⁰

Finally, there appear to be several subsets of motivations that are not related to personal interest in law study or law practice, but rather reflect external reasons or pressures for entering law school. In contrast to other fields of professional education, law schools have traditionally admitted substantial numbers of people who desire the law degree as a means of advancing a career in some other field—most commonly, business, teaching, politics, or government service.¹⁰¹ A number of practical and philosophical questions are presented by this group of "nonlawyer law students." Do the motivations that bring those students to law school generally persist after law school, or is there a pronounced tendency toward "recruitment" to full-time legal careers?¹⁰² Do students who view law school as a means to an end other than law practice perform poorer than those who plan to pursue legal careers?¹⁰³ Is this an area where a form of specialization among law schools exists so that, for example, local or regional schools attract those desiring advancement in business careers, while the national schools draw aspiring politicians or government workers?¹⁰⁴ And, perhaps most

¹⁰⁰ Stevens 614.

¹⁰¹ In Stevens's sample, approximately 47% of the respondents attributed either "some" or "great" importance to the "desire to become a politician" as a factor motivating their decision to study law. Slightly more than one-half ascribed similar weight to a desire to enter government service, and 37% reported a desire "to go into business." *Id.* at 616.

¹⁰² One study attempted to evaluate the recruitment phenomenon by conducting follow-up research on students who indicated that they planned to attend law school but did not intend to pursue legal careers. A majority of those who had entered law school had changed their plans by the end of the first year and planned to become career lawyers. Moreover, the data suggested that the recruitment was stronger at the "better" schools, *i.e.*, those with the highest mean LSAT scores of entering freshman. However, data on this last point fell below the level of statistical significance. See Zelan, *Occupational Recruitment and Socialization in Law School*, 21 J. LEGAL ED. 182 (1968).

¹⁰³ Cf. Stevens 649:

[The research] results seem to indicate that the more clearly the motivating factor refers to the time frame of law school, the more highly it correlates with interest in the content of legal education during the first semester. Factors related to expected activities after graduation from law school, such as financial rewards, independence, handling others' affairs and professional prestige were not positively correlated with first semester interest. Between lay a general desire for professional training, which can be viewed as intermediate in terms of the time frame to which it relates. In short, the more immediate the benefits associated with going to law school, the greater the degree of interest in the first semester. At the risk of oversimplifying, those who regard law school as a means appear less enthusiastic than those who regard it as an end.

¹⁰⁴ Differences between the "A" law schools—those with the most resources—and lower-stratum schools were discovered:

important, do law graduates who follow nonlegal careers actually use the skills acquired in law school, or is the law degree merely a status symbol built upon wasted social resources? At present, we have very little reliable information about these aspects of student motivation and career planning.

Another kind of external motivation that may affect the decision to study law is the influence of individuals or groups often referred to as "significant others": parents, relatives, friends, and teachers.¹⁰⁵ Although previous studies of law students have not explored the point, it seems probable that "significant others" can affect career decisions¹⁰⁶ in a great variety of ways, ranging from active encouragement and offers of financial support to passive approval. Future studies should attempt to explore these different influences more fully, and also to examine the potential negative impact of influential people who may turn a person away from a career he previously desired.¹⁰⁷

The last, catch-all category of external influences is comprised of those that reflect a process of elimination: the student not firmly committed to any particular field who wants to keep his options

[The students in the sample] could indicate a desire to practice, a specific desire other than practice (i.e., disliked their job, sought aid in business, wanted a government job, hoped for public service), or they could indicate a general motivation (such as furthering their education . . .). To our surprise, in responses from "A" schools there was an appreciable difference in the percents between day and evening students; about 35% wanted to practice; 20% had some other specific reason; and 45% had only a general motivation. Responses from evening students at "B" and "C" schools showed somewhat less interest in practice. A substantially larger number had some specific goal other than practice.

C. KELSO, *supra* note 66, at 168.

¹⁰⁵ Stevens found that women in his sample were more likely than men to be influenced by lawyers in the family. As might be expected, blacks and students from low income families were less likely to cite family influence and more likely to rely on teachers or friends to support their decisions. In general, "the likelihood of familial influence increased as parental income increased." Stevens 615.

¹⁰⁶ In *The Graduates*, approximately 60% of the prospective doctors and lawyers cited "parents' encouragement" as an important factor influencing their graduate study plans. For other disciplines, the figures ranged between 39% and 45%. On the other hand, law and medical school recruits were much less likely than other prospective graduate students to cite the influence of college faculty, which probably reflects the tendency of college teachers to recruit for their own disciplines. BAIRD 81.

¹⁰⁷ See, e.g., Riesman, *Some Observations on Legal Education*, 1968 WIS. L. REV. 63, 64-65: The college faculty who have first crack at these students frequently try to convert them to an interest in their own fields. . . . Yet, the more dazzling and original the professor of history or government or whatever else, the more apt he may be, with some students, to defeat himself as a recruiter, for in fact the students may decide that although they are capable, they are not truly superior. . . . These students who have been persuaded by their undergraduate teachers that they are not sufficiently original to enter an academic career have had less opportunity to be intimidated by lawyers and the law.

open; the "second-choice" law student who is unable to get admitted to an acceptable graduate program in his most desired subject, or who thinks that employment opportunities in the first-choice field are so poor that a change is necessary; and the "escapist" who views law school as a means of avoiding or postponing some unpleasant obligation like the military draft of recent years. The notion that law school serves as a "residual graduate school" apparently has some validity, although this phenomenon is probably not as great as many suppose.¹⁰⁸ Although the student who makes this last-minute decision to study law may be less prepared for law school, less committed to law study, and therefore less likely to perform well academically, there is little substantiating evidence.¹⁰⁹ If the late deciders and those who more or less drift into law school tend to perform as well as those who commit themselves to law at an earlier time or for "better" reasons, then there may be positive advantages to maintaining the tradition of few or no undergraduate course prerequisites for law study.

In short, research into the motives that bring people to law school can have multiple purposes in a broad program of studies on legal education. It can serve as a baseline for evaluating the socializing effects of the law school, providing a measure of the influence of legal education in altering motivations, goals, and beliefs. It also may affect teaching methods and curriculum, suggesting approaches that, on the one hand, take advantage of the students' existing orientation, or on the other hand, attempt to change or counteract student desires.¹¹⁰ Finally, to the extent that

¹⁰⁸ About a quarter of the law students in Stevens's sample attributed great importance to the fact that they were "uncertain" of career plans and "law seemed best"; another 30% said this factor had some importance. He also found that "[u]ncertainty about future careers was least prevalent at the lowest income level and most prevalent at the highest brackets." Stevens 616.

In another study based on a one-school sample, 15% of the law students agreed that "I sort of drifted into the decision without serious consideration of competing factors or long term goals." Little, *supra* note 76, at 154. At the other end of the spectrum, 30% reported that "It was a difficult decision; I chose to study law only after serious consideration of other alternatives." *Id.*

¹⁰⁹ One sociological study based on a sample of law students from a single school concluded that "[t]he earlier one makes up his mind to become a lawyer, the more likely he was to become accommodated to law school with a minimum amount of trauma. [However, earliness of] [d]ecision-making had practically no association with grades for nondropouts." R. Meile, Performance and Adjustment of First Year Law Students, July 13, 1961, at 134 (Ph.D. dissertation, University of Washington). In other words, the late deciders who made it through the first year had somewhat greater emotional difficulties with law school, but this did not seem to affect academic performance. Among those who dropped out during first year, however, late decision to enter law school was correlated with poor grades. *Id.* at 135.

¹¹⁰ One example of a situation in which the law school may desire to counteract an

initial motivations foreshadow law school performance or eventual career activities, they may suggest a better approach to selecting future lawyers than the present emphasis on purely intellectual and academic performance credentials.

C. *Choice Among and Admission to Law Schools*

An area of inquiry which parallels study of student motives for selecting a legal career is the reason why prospective lawyers choose a particular law school. In general, these reasons should be similar to the factors which motivate students to make the initial decision to enter law school. Perhaps the most important factor is the academic excellence of the school¹¹¹—that is, its reputed quality or prestige. Other significant factors are its reputation for having a unique or desirable perspective on law study, such as emphasis on the social sciences, or political activism, or practical orientation toward law practice in a particular state; small size of classes;¹¹² and

existing motivational pattern would be the hypothesized tendency of intellectually oriented students to misapprehend the emotional dynamics of ethical conflict situations. See note 89 and accompanying text *supra*. Dr. Watson believes that this type of problem can be effectively dealt with through techniques of interpreted experience. See, e.g., Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, *supra* note 43, at 144-46.

¹¹¹ The researchers in *The Graduates* concluded:

When we asked students to rate the importance of twenty-one factors in choosing a graduate or professional school, one factor stood out—the high caliber of the program offered. This factor was by far the most important in every field, indicating the students' concern for the quality of their education. A related factor, prestige of the institution, was also frequently considered important.

BAIRD 89. In comparison to students planning postgraduate study in other disciplines, prospective law students were highest of all fields in attributing importance to the "prestige of [the] institution," and a close second to prospective medical students in emphasizing "the high caliber of the program offered in my field." *Id.* at 88.

¹¹² Size of law school classes may be a more significant factor for prospective law students than is commonly suspected. Over a quarter of the prospective law students surveyed in *The Graduates* reported that a "small department or professional school" was important in their choice of schools, which was higher than the percentages for all other disciplines; another 20% indicated that a "large department or professional school" was important to them. *Id.* at 88. It may be that the question elicited responses encompassing two different concerns: those emphasizing a "large law school" may have been interested in general resources such as a large library, a wide range of talents in the faculty, and students from different backgrounds, while those favoring a "small law school" may have focused on small classes, good faculty-student ratios, and the opportunity to work with faculty members on an individual basis—all of which could be achieved equally well in a large law school with appropriate characteristics.

Substantial antipathy to large classes seems evident in the comprehensive alumni surveys recently conducted by the Harvard and Stanford law schools. More than a third of the Harvard alumni believed that large classes had made "no contribution" to their legal education. See Harvard Law School Bulletin, May 1968, at 16 [hereinafter cited as Harvard Alumni Survey]. See also Responses to the Board of Visitors Survey of the Stanford Law School Alumni 7 (Stanford Lawyer Supplement, Spring 1972) [hereinafter cited as Stanford Alumni Survey].

special opportunities, such as joint degree programs or the possibility of studying under an eminent professor. Financial considerations of lower tuition or the availability of financial aid or employment undoubtedly are of primary importance for many law students.¹¹³ The geographical location of a school also can be important, either because it is a pleasant area in which to live while attending school or because of student interest in practicing in the area after graduation.¹¹⁴ Finally, some students will be influenced by family or friends who have contacts with the law school, or by the fact that they could not get admitted to schools which they would have preferred.

Better information on the processes by which students find their paths to different law schools could contribute to an understanding of whether the admissions process does channel the most talented students to the "best" schools.¹¹⁵ From the student's perspective, there is concern whether the choice of school is based on reliable, detailed information about the qualities and characteristics of particular law schools, and whether extrinsic factors such as financial or geographic considerations significantly limit student options in applying to law school. Stevens found that many students relied on vague general knowledge in selecting a law school,¹¹⁶ and that the student bodies at the elite "national" law schools came from higher-income families than those at the "regional" schools.¹¹⁷

¹¹³ See BAIRD 88; Stevens 627.

¹¹⁴ See BAIRD 88. See also Stevens 626: "[T]he most interesting aspect of the geographical motive is the strong initial interest in local practice by a third to more than half of the students at all [of the six] schools [in the sample] except Yale and Michigan."

¹¹⁵ Apart from the difficulties of assessing which law schools and which prospective students are "best," one may dispute the assumption that an ideal system of legal education would allocate the best students to the elite schools, the second-best students to the second-rank schools, and so on. Rather, it might be argued that the total benefit is maximized if every law school has at least a few of the truly outstanding students. Regardless of which view one takes, it seems desirable to have a better understanding of the decision-making processes by which students are "allocated" to different law schools.

¹¹⁶ For all the students in the sample, Stevens concluded that "notions of quality and prestige appear premised more on nebulous general school reputation than on specific knowledge." Stevens 625. Focused interviews with Yale law students revealed that "[m]any thought that Yale had some special perspective in its teaching of law, that it would be 'nontechnical,' and 'socially concerned.' Many of the interviewees stated that these expectations were disappointed." *Id.* at 629.

¹¹⁷ *Id.* at 602-03. However, students at the "national" schools had higher median LSAT scores and higher class rank at college. Thus, the advantages of being from a high income family may not consist simply of greater ability to afford high-cost prestige law schools, but rather may reside in benefits at earlier stages of the educational process which are reflected in higher LSAT scores and college grade-point averages. Cf. BAIRD 22-26.

Admissions practices from the law schools' perspective also are deserving of further investigation. One survey of admissions policies revealed enormous diversity at various schools in the procedures and criteria used in making admissions decisions, ranging from blind hunch to detailed numerical formulas, and apparently with little regard to the statistical validity of available data.¹¹⁸ Student dissatisfaction with the admissions process also is substantial. Over one-half of the national sample of prospective law students surveyed in *The Graduates*¹¹⁹ reported that "[t]he factors the school considered important for admission were never made clear" by some or most of the schools applied to; more than one-third agreed that they had "had trouble getting as much information about the school" as they needed; and approximately one-fifth of all law school recruits—including forty-four percent of the women applicants¹²⁰—believed that they may have been the victims of discrimination in the applications process.

The decision-making process by which a student and a law school select each other constitutes the first stage of the profession's certification mechanism. This mechanism extends through law school performance and grading, bar admissions requirements, and measures of professional competence and success.¹²¹ As several studies have noted,¹²² there seems to be a very direct correlation between the kind of law school an individual attends and the kind of practice or the material rewards he later achieves; thus, the choices of law schools and law students may greatly influence the future shape of the profession. If pressures on the admissions process remain high, and if the proposals for greater diversity or specialization among law schools materialize, then the limits on student freedom of choice and perceived irrationalities in the admissions process will become an increasingly sensitive area of controversy.

D. *Student Experience in Law School: The Professionalization Process*

One of the fundamental questions in legal education is the effects of law school on the people who go there. Increasingly,

¹¹⁸ Lunneborg & Radford, *The LSAT: A Survey of Actual Practice*, 18 J. LEGAL ED. 313 (1966). For a description of a method for deriving a formula to predict student success in a particular law school, see Lunneborg & Lunneborg, *supra* note 58.

¹¹⁹ BAIRD 91. All figures represent the percentages of respondents who indicated that the problem in question had occurred at "some" or "most" of the law schools they had applied to.

¹²⁰ *Id.* at 102.

¹²¹ See text accompanying notes 192-93 *infra*.

¹²² E.g., J. CARLIN, *LAWYERS ON THEIR OWN* (1962); Ladinsky, *supra* note 60.

perceptive observers are realizing that this question cannot be confined to intellectual development or skills training, but, rather, must include changes in personality, values, work habits, and social roles—in short, a recognition that “professionalization” or conversion of college graduates into lawyers is a complex and pervasive process.¹²³ This transformation is not confined to the classroom or even to the law school years. For most lawyers, the early years of practice constitute a particularly intense learning experience, and development of the individual’s professional identity and abilities is truly the work of a lifetime.

Even if the focus is narrowed to the law school years, however, “before-and-after” changes in any group of law students may be due to quite different causes.¹²⁴ Students attending law school are at an important stage of the maturation process, a stage totally independent from the effects of law school. Many experience for the first time at this age the demands and responsibilities of marriage, children, career choice, and freedom from parental control. In sociological terms, they are undergoing the process of “enculturation,” progressing toward full membership in the dominant adult culture of society. During law school, moreover, many who are temperamentally or intellectually unsuited for legal careers will be removed, either by personal decision or some form of dismissal. Finally, and of primary interest to the profession, those who succeed in law school will become “acculturated” to the lawyer’s role and function, and in turn may affect the prevailing culture of the law school and the profession.

Until recent years, neither social scientists nor law teachers devoted much attention to these phenomena. Those who have begun to think and write about the professionalization process approach it from a variety of perspectives and often rely on casual empiricism rather than controlled scientific methodology. Thus,

¹²³ Cf. Lortie, *Laymen to Lawmen: Law Schools, Careers, and Professional Socialization*, 29 HARV. EDUC. REV. 352, 363 (1959):

[T]he highly socialized member of a profession so plays his roles that they appear inseparable from him. But the beginner has much to learn before his self and his daily round conjoin; he must first perceive the multiple expectations that characterize legal roles, and he must acquire the complex skills needed to match those expectations. He must learn the values of his profession in general and in specific; he must puzzle through many dilemmas before experience results in moral decisiveness. He must act in the presence of others, perceive their evaluations of his performance, and find his assertions of identity confirmed. The development of a professional self-conception involves a complicated chain of perceptions, skills, values, and interactions.

¹²⁴ See generally Oleson & Whittaker, *Critical Notes on Sociological Studies of Professionalization*, in PROFESSIONS AND PROFESSIONALIZATION 36 (P. Jackson ed. 1970).

the literature on professionalization of law students could hardly be described as rich, extensive, or coherent. Nonetheless, many of the hypotheses and findings that have emerged from the "new criticism" of the law schools are sufficiently provocative and plausible to merit serious consideration.

1. *The Emotional Climate of the Law Schools*

Recent criticism of legal education is characterized by emphasis on the interaction of the emotional and intellectual aspects of law school. Many commentators now believe that proper understanding of the intellectual processes of legal education requires investigation of the emotional dynamics of learning, teaching, and the law school experience.

A logical starting point for inquiry is the distinctive emotional qualities that law students possess when they begin their legal education. One prominent characteristic of prospective lawyers, as revealed by research in *The Graduates*, is extreme self-confidence. When asked to rate their abilities in a wide range of intellectual and nonacademic areas,¹²⁵ the law students exhibited the "peak of self-regard":¹²⁶

In 11 of the 21 self-rating areas they rated themselves higher than any other group. In two others they were second highest. The only low areas were artistic and musical ability. Their high self-ratings included the academically related abilities of writing, reading, and clerical ability, scholarship, perseverance, and memory. The future law students also rated themselves high in areas involving skill in dealing with other people: leadership, speaking, and sales ability, and skill in relating to others on an individual basis. They also rated themselves high in athletic ability. Finally, they rated themselves high on the more general traits of reliability and ability to act when limited facts are available.¹²⁷

¹²⁵ The rationale for this type of research is explained in the following terms:

A good deal of evidence about the importance of one's conceptions of himself or herself suggests that we tend to behave in a manner consistent with our own ideas of what we are like. The tendency may be especially strong in the area of abilities. Self-concepts seem to be highly related to achievement in college

This interpretation is consistent with the results obtained by a number of investigators of such non-college groups as creative adolescents . . . and creative research scientists. . . . The achiever has a history of activities and achievements related to his present achievement. He is motivated to achieve in this area and accurately assesses his own talents.

BAIRD 33.

¹²⁶ *Id.* at 36.

¹²⁷ *Id.* at 38. The researchers also note that despite the prospective law students' high self-ratings in academic abilities, "seniors who planned to study law were not likely to have

As previously noted, other researchers have characterized law students as inclined to act intellectually or rationally rather than emotionally, and as concerned with verbal aggression, social ordering, and justice.¹²⁸ Also, most law students are probably strongly committed to achieving success in law school, a desire which may be quite vague and unfocused:

[T]here is empirical evidence to suggest that young adults in our society expect more of themselves than they will ever attain. Before they select an occupation and commit themselves to it, they have no real sense of what it entails. Thus, they can retain a variety of ambitions and dreams which nourish their ego-ideal. Law students present an extreme pattern in this respect since many of them matriculate at law school without any commitment to become lawyers. Furthermore, the generalist tradition of legal education leaves open the possibility of achieving a variety of other grander goals, further expanding their ego-ideal.¹²⁹

According to psychoanalysts and sociologists, beginning law students may experience a variety of threats and disappointments. Student expectations, based on poor information or misunderstanding,¹³⁰ may differ markedly from the reality of law school. This "reality shock"¹³¹ seems to be manifested in three

attained markedly higher grades than other students." *Id.* at 187. They conclude that "[p]erhaps this is due to the equally high performance of students in other fields and the great numbers of students not planning further education who also have high grades." *Id.* at 188.

¹²⁸ See notes 92-98 and accompanying text *supra*.

¹²⁹ Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 423 (1971); cf. Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1202:

The nine first year students [interviewed weekly] spent most of the interview time discussing "success" in law school. Their initial definition of success was not merely "passing" nor finishing in the "middle of the class," but completing the year "near the top" of the class.

See also Stone, *supra* at 425: "Strangely enough, many law students believe that their previous success has been achieved through some sort of fraud which will be exposed at law school."

¹³⁰ *E.g.*, Comment, *supra* note 129, at 1206:

Discussions [with first-year law students] . . . indicated serious misconceptions about law and law school. Several students asked when they could take courses in public speaking, dramatic trial tactics, and techniques of surveillance At the beginning of the semester few students knew even generally what topics were included in the courses in torts, contracts, and civil procedure. Even after the semester progressed, students were upset because law school did not meet their expectations.

¹³¹ *E.g.*, R. Meile, *supra* note 109, at 29-30:

Adjustments to a new situation is a function of the degree of agreement between the expectations one has of that situation, and the reality of that situation. . . . Those students who have advanced knowledge about what law school will be like not only adjust more readily, but they tend to do better than average work as a result of this.

A similar concept is "anticipatory socialization," which relates to the fact that "[t]hose

principal ways. First, the popular illusion of certainty, predictability, and order in the law itself is dismantled by the rigorous analysis of law teaching and the Socratic method.¹³² Law students also expect to assume the social role of the lawyer,¹³³ a deceptively complex task¹³⁴ which may be further complicated or frustrated by the conflicting images of the lawyer which students and society share,¹³⁵ by the separation of the law school from the everyday realities of law practice,¹³⁶ and by the dual role of the law teacher

persons who have more knowledge about the roles they will play at some future date are, in a sense, more socialized for that role." *Id.* at 35.

¹³² See, e.g., Watson, *Reflections on the Teaching of Criminal Law*, *supra* note 38, at 703: One of the greatest sources of anxiety in first year students is brought on by the shattering of this illusion [of the certainty of law] under the incessant attrition of case method teaching.

The desire for certainty . . . touches upon a universal psychological need—the need to achieve order and predictability in relationship to other people and the world around. . . . Because of this, everyone from childhood on attempts to find ways and means to anticipate and predict the course of the future. This powerful motivating stimulus causes some to follow a career in the law, one of the functions of which is to develop rules and procedures for ordering social and personal relationships.

See also Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 105-06.

Sociologist David Riesman has suggested that part of the lawyer's occupational role is "being unimpressed by authoritative rituals," and that a central aspect of legal education is that "[l]awyers learn not to take law seriously." D. RIESMAN, *supra* note 84, at 450-51.

¹³³ See Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 105-06.

¹³⁴ Cf. Bellow, *supra* note 20, at 380-81:

[A] person's role refers to the set of actions and qualities which are expected in a given social position or status. To perform in a role—that is to "validate one's occupation of the position"—the actor must learn: 1) the duties, rights, obligations, and privileges that are the defining characteristics of the position; 2) the cues, signs, behaviors, and demands which enable the actor to choose the appropriate role manifestation in a particular situation . . . ; 3) the aptitudes (cognitive, perceptual, verbal, gestural) needed to perform in the position.

Since persons occupy many role positions simultaneously, and multiple positions within a role category, this involves an extremely complex psychological and perceptual process. . . . To continue in any given role, the actor must both receive positive reinforcement of the appropriateness of his behavior from "significant others" and feel some sense of congruence between the role behavior and his self-concept.

¹³⁵ For example, Dr. Watson describes the beginning students' paradoxical image of the lawyer as a "money-grubbing shyster" and a "seeker of ultimate justice." Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 105.

¹³⁶ E.g., Lortie, *supra* note 123, at 364-65:

Analysis of the modal images held of law as work discloses the gradual replacement of an exotic and dramatized image by one which takes account of routine and pedestrian elements. The dominant initial image—"the courtroom version"—is highly theatrical. . . . Perhaps the crucial attribute of the image is its charismatic rather than routine quality—it is the antithesis of the prosaic.

. . . The changes that occurred before and during law school are similar—the young lawyer-to-be realizes that there are other than courtroom roles open to lawyers, and that even those who do work in courts do so only part of the time. . . .

There is, however, a latent content which apparently persists until the young

as an academician and exemplar of the professional man.¹³⁷ Finally, the learning task itself can be quite different from what law students expect. It may still be true that "undergraduate education in America is unfortunately not noted for assisting a student to reason analytically,"¹³⁸ and thus neophyte law students may assume that "massive memorization" is the route to good academic performance.¹³⁹ Thus, faculty demands for analytic performance—for "thinking like a lawyer"—may be perceived as poor teaching, "not covering the material," or pointless humiliation of students,¹⁴⁰ and the students may persist fruitlessly in seeking "black letter rules" to memorize.¹⁴¹

Another important emotional aspect of the law school envi-

lawyers face the demands of practice. . . . The tasks are different primarily in the way they strike the respondents—they are "more routine," "more difficult," and "less intellectually stimulating." . . . Elements of glamour, facility, and idealism persist in the image until first-hand contact with legal work; it takes contact with actual practice to bring full recognition that law work is mundane, laborious, and not necessarily idealistic.

But cf. Steele, *A Comparison of Attitudes of Freshman and Senior Law Students*, 23 J. LEGAL ED. 318 (1970).

¹³⁷ See Patton, *The Student, The Situation, and Performance During the First Year of Law School*, 21 J. LEGAL ED. 10, 34-35 (1968):

The manner in which a professor of law teaches his subject and treats his students was generally experienced by the persons in this sample as different, initially, from what they had previously expected of a teacher. . . . The difference appeared to be one of encountering a person who held the position of "teacher," but who also expressed some of the attributes of another role—a practicing lawyer.

The law teacher, in expressing the attributes of the legal profession as he teaches, is telling students something about what he expects of them. . . . [I]t was up to the student to become aware that the teacher's behavior itself served as a "for instance" of what he was expected to learn. If on the other hand, the student persisted in casting the law professor in a more conventional mold, as many of these students seemed to do, he was likely to remain unaware of the teacher as a source of information for learning what was expected.

¹³⁸ *Id.* at 34.

¹³⁹ Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 106. Watson further observes: "As always with human expectations, that which was done previously with success has strong allure and is coupled with a nearly magical expectation of positive results." *Id.*; see Comment, *supra* note 129, at 1208: "Memorization satisfies the students' conception of what they ought to be doing in law school. Also it was the technique which they used with considerable success in college." See also Patton, *supra* note 137, at 33: "[S]ome students enter law school with an attitude toward the acquisition of knowledge that is inappropriate in this setting; i.e., that one learns what he needs to know by memorizing material."

¹⁴⁰ See, e.g., Patton, *supra* note 137, at 27-39.

¹⁴¹ *Cf.* Watson, *Reflections on the Teaching of Criminal Law*, *supra* note 38, at 712:

One of the common ways a human being can "bind" the anxiety disturbing him is to evolve a set of rules which, if followed, will "guarantee" a sense of well-being. Students reacting to the case method scramble wildly to find such rules. When rules are not given, they try to create them. Though successive sets are struck down by the method, the search persists.

ronment is its highly competitive atmosphere. Although many students undoubtedly expect law school to be intensely competitive,¹⁴² they may not fully appreciate the degree to which this is the case. One sophisticated observer has concluded that, within the traditional law school structure, "competition is magnified to the limit of human imagination and endurance."¹⁴³ The peculiar dynamics of law school competition have several distinctive characteristics. The selection of law students through individual choices and school admissions policies produces a student body which is particularly oriented toward individual achievement and success. Moreover, law students tend to define competitive success as nothing less than finishing at or near the top of the class.¹⁴⁴ The typical law school reinforces this tendency by striving to be an "absolute meritocracy"¹⁴⁵ with rewards and esteem based solely on academic accomplishment. As a result, neither one's own failure nor the success of others can be easily attributed to "personality," "connections," or the like.¹⁴⁶ Further, at least in the first year, everyone in law school takes the same courses using the same materials and is expected to perform the same kinds of analytical operations. Thus, there is little opportunity to escape or to rationalize competitive stress.¹⁴⁷ The law school experience also comes at the end of a long period of academic competition, starting well before high school. As a result, the students' restiveness at

¹⁴² *E.g.*, BAIRD 64: "The majority of seniors thought that law schools are characterized by intense competition for grades"

¹⁴³ Stone, *supra* note 129, at 424.

¹⁴⁴ See note 129 *supra*.

¹⁴⁵ Stone, *supra* note 129, at 423.

¹⁴⁶ Riesman has observed that law schools in general, and law reviews in particular "pay no attention to 'personality' and concentrate on performance with a zeal as rare and admirable as it is savage." D. RIESMAN, *supra* note 84, at 452. He contrasts this with the situation confronting medical students:

Already in the first year of medical school, the student has entered into a network of personal ties which will be decisive for his professional fate; he is judged, and judges himself, by his "personality" and connections quite as much as by his more intellectual qualities. . . . The medical school student attends a "clinical" school in the very real sense that the values which dominate the school also dominate later medical practice, though perhaps in a somewhat muted form. Medical school students, no matter how service-oriented on entrance, soon learn that they live in a patronage network whose unspoken rules will govern internships and the whole complex ladder of medical practice today.

Id. at 453-54.

¹⁴⁷ *Cf.* Watson, *Reflections on the Teaching of Criminal Law*, *supra* note 38, at 711-12: With the wide and flexible curriculum in most undergraduate schools, lazy or fearful students may escape nearly all of the kind of intellectual stress they will meet in law school. For this reason, most law students encountering the case method will develop marked anxiety which in the extreme may cause physical or emotional illness.

continually "getting ready" rather than proving themselves in the world,¹⁴⁸ and their subordination to teachers who control the competitive situation,¹⁴⁹ may create hostility toward the goals and assumptions of the law school.

Finally, there is an unusual temporal element to the competition in law school. From the standpoint of competitive success, the first year is undoubtedly the most crucial because the first-year grade-point average is generally determinative of status and rewards, including law review, summer employment, and research assistant positions. Indeed, the weight of the first-year grades is so massive that efforts to raise a mediocre average in the second or third year may seem largely futile.¹⁵⁰ Furthermore, during the first year, success or failure typically depends almost entirely upon performance in a few examinations at the end of the year, with little "feedback" or "positive reinforcement" in the interim.¹⁵¹ According to the commentators, this lengthy uncertainty creates severe anxiety and may lead to behavior fairly characterized as irrational or neurotic: frequent and purposeless changes in study methods,¹⁵² creation of "false feedback" or reliance on irrelevant or questionable factors as predictors of success,¹⁵³ and blocking of emotional reactions to stress in the classroom. This defense

¹⁴⁸ Cf. Bellow, *supra* note 20, at 392-93.

¹⁴⁹ E.g., Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. LAW & SOCIAL ACTION 71, 80 (1970):

The Law School is intellectually stimulating. But when you have been competing in deadly earnest since the age of ten, submitting constantly to your own fear of the teacher's disapproval, accepting your own status as a non-person, there is a point at which no amount of intellectual interest will overcome your fear and revulsion at the spectacle of the professor smiling quietly to himself as he prepares to lay your guts out on the floor yet once again, paternally.

¹⁵⁰ Patton, *supra* note 137, at 50; cf. Lempert, *Law School Grading: An Experiment with Pass-Fail*, 24 J. LEGAL ED. 251, 261-63 (1972).

¹⁵¹ E.g., Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 123:

There is little overt reward given for good performance under [the Socratic method] . . . Since most professorial responses are questions, they are perceived as never-ending demands, and the hoped-for relief never comes into sight. Such a technique runs counter to all learning theory. The system of rewarding good performance is an ancient one, and the "prize" of good grades at the end of the year is probably too remote for many law students to use as a motivation to full application throughout the school year.

¹⁵² E.g., Comment, *supra* note 129, at 1206.

¹⁵³ *Id.* at 1210:

False feedback is usually the use of a personal descriptive term, for example, "married," to predict law school success. . . .

The students grasped for many "characterizations" which they thought would enable them to predict their success in law school. One thought that his failure to take more than an introductory political science course cast certain doom. Another thought that the fact that he was "older" would help insure success. Another thought that his self-characterization as "argumentative" would gather high grades.

mechanism is then generalized to all emotional responses.¹⁵⁴ Also, the frustrations and uncertainties resulting from lack of feedback may fuel objections to the grading system that are expressed in other terms.¹⁵⁵

The competitive environment of the law school also influences the peer-group relations of law students. Sociologists have noted some distinctive features of law student groups. In contrast to the "intimate and socially oriented" groups typically found in undergraduate colleges, law school groups seem to be much more "formal and task oriented."¹⁵⁶ Similarly, leaders in law school groups appear to be both "instrumental leaders" (task-oriented) and "expressive leaders" (oriented toward producing social harmony within the group), even though these functions are ordinarily considered incompatible.¹⁵⁷ Feelings of enmity, hostility, and contempt for fellow students are not uncommon in law school.¹⁵⁸ Competitiveness is one explanation for these qualities of law student groups, since "active competition with friends is a contradiction in terms";¹⁵⁹ moreover, pervasive anxiety about failure may preclude openness in interpersonal relations among law students.¹⁶⁰ Yet, student groups and a student subculture do exist in the law schools, and no doubt they can significantly influence work values,¹⁶¹ adjustment and performance,¹⁶² and relations be-

¹⁵⁴ Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL ED. 1, 13 (1963).

¹⁵⁵ Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, *supra* note 43, at 150-51:

[S]tudent concerns about grades expressed in the desire for pass-fail or in its opposite may be seen as a reflection of the powerful human desire to know exactly where one stands. It is my impression that much of this discussion about grading stems from a kind of magical effort to eliminate the *fact* of competition in order to control where one will be placed in it. Of course the reality of ambiguity will then reincarnate the same conflict.

¹⁵⁶ Patton, *supra* note 137, at 39.

¹⁵⁷ See R. Meile, *supra* note 109, at 115-27.

¹⁵⁸ Stone, *supra* note 129, at 415-16. On the basis of interviews with second-year students, Stone concluded that "[t]hese students view each other in ways that, on the surface at least, are remarkably critical and nasty, and there is in fact an extraordinary amount of overt contempt." *Id.* at 415 n.75.

¹⁵⁹ Rickson, *Faculty Control and the Structure of Student Competition: An Analysis of the Law Student Role*, 25 J. LEGAL ED. 47, 53 (1973).

¹⁶⁰ See Comment, *supra* note 129, at 1215:

Students would probably find comfort in knowing that others are as afraid as they. But most of the students indicated this does not occur. . . . In this situation failure anxiety, which is caused, in part, by a lack of feedback, prevents feedback from occurring. As the semester progresses the students, aware that they may not be succeeding, do not want to reaffirm their concern by discussions with other students or professors.

¹⁶¹ Stone argues that

[i]f [the law student] openly and eagerly competes, as previous generations of

tween students and faculty.¹⁶³ Understanding of these group processes in the law school is currently at a very primitive stage.

Peer groups and "significant others" may also have great influence on the student's commitment to a legal career. Common sense suggests that the highly committed student will be motivated to adapt and perform better in law school, and sociological theory postulates that the individual's commitment to the basic goals of an organization makes socialization easier.¹⁶⁴ But one study which attempted to validate this hypothesis with law students found that those who were not deeply committed to legal careers and believed they were supported by influential reference groups in alternative career choices had the least difficulty adjusting to law school.¹⁶⁵ For these students, the possibility of entering some other field relatively painlessly if they did not succeed in legal studies apparently served as a "safety valve" that reduced their anxieties and made it easier to adapt to law school.¹⁶⁶ Although these noncommitted students

students have done, he runs the risk of intense negative peer reaction What the law schools must deal with, therefore, is a large group of students who at some level of deep emotional conviction want to excel without competing.

Stone, *supra* note 129, at 424.

For an illuminating study of the ways in which student groups can affect the work patterns and values in medical school, see H. BECKER, B. GEER, E. HUGHES & A. STRAUSS, *BOYS IN WHITE: STUDENT CULTURE IN MEDICAL SCHOOL* (1961).

¹⁶² Meile (*supra* note 109, at 99-115) found that law students who were members of "primary groups" of fellow students experienced more initial difficulty adjusting to law school than nonmembers. This difficulty preceded group membership, so that apparently those who encounter difficulties become group members to assist their adjustment. A larger proportion of group members than nonmembers improved their grades during the first year, and they were less likely to consider nonlegal careers.

On the other hand, it seems clear that peer groups can reinforce poor adjustment and performance. Patton (*supra* note 137, at 41-42) found that

[t]he lower-achieving student was more apt to find friends who were also doing less well and who shared some of his evolving attitudes toward the faculty and better students. That is, he sought friends who were also "less concerned about the law school." What this seemed to mean to him is that he chose to associate with those persons who did not value and demand from him a display of [legal] competence as an important requisite for membership. He was then freer to rely upon other bases of interaction to establish his worth and gain satisfaction; e.g., social and athletic skills, literary and philosophical interests, etc.

¹⁶³ Rickson (*supra* note 159, at 53-60) hypothesized that law students who were most competitive would also be most likely to accept the "faculty definition" of the student role, which encompassed extracurricular activities, regular class attendance, and so on, rather than the "student definition," which encompassed only high performance on examinations. However, the data were contrary to the hypothesis. It might be asked whether the "faculty definition" was really as extensive as described; it may be that the students believed that the faculty actually assessed student performance solely on the basis of grades, despite their professed interest in other attributes.

¹⁶⁴ *E.g.*, R. Meile, *supra* note 109, at 27-28.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 74-77.

adjusted more readily, they did not *perform* as well in grades as the committed law students.¹⁶⁷ Moreover, to further complicate the picture, it appeared that the students' ego involvement with the law—their ability to see themselves as lawyers and to assume the lawyer's role—was not significantly related to either performance or adjustment.¹⁶⁸ Although the data are thus rather equivocal, it appears that concepts such as "commitment," "motivation," and "ambition" are rather complex emotional phenomena, and that there may be substantial trade-offs between the emotional stress students experience in adjusting to law school, and the levels of academic performance they achieve.

Another frequently discussed emotional facet of the student experience in law school is the students' perception of faculty hostility and aggression, which is usually, though not inevitably, linked to criticism of the Socratic method:

[I]f you ask the more sensitive students what they feel is the dominant tone of the classroom of this or that professor, and then probe the answer even a little bit, you will discover the *perception* of hostility.

. . . .

This perception is strongest among first year students, and is weaker in seminars than in large classes, but these differences are only quantitative. Hostility is sometimes seen as embodied in a teacher's actual words. A great many students, of all levels of academic competence and of many varieties of personality, feel the Socratic method (the basic question and answer, suggestion and criticism approach, rather than the stricter version once popular and now practiced by only a few teachers) is an assault. The observation that students often respond physically and emotionally to questioning as though they were in the presence of a profound danger is simply *true*. . . . Few will deny that the atmosphere of the first year classroom is as heavy with fear as it is tense with intellectual excitement. The point here is more than that: students see professors as people who want to hurt them; professors' actions often do hurt them, deeply.¹⁶⁹

Defenders of Socratic teaching concede that the law faculty has "almost total power" over the students,¹⁷⁰ and therefore has

¹⁶⁷ *Id.* at 78. See also Lempert, *supra* note 150 (analyzing law student performance and perceptions of "pressure" under optional pass-fail grading system).

¹⁶⁸ R. Meile, *supra* note 109, at 78.

¹⁶⁹ Kennedy, *supra* note 149, at 72-73 (emphasis in original).

¹⁷⁰ Stone, *supra* note 129, at 412. However, Stone points out that the students are not utterly powerless in the face of faculty aggression:

If students deeply resent these aggressive interchanges, the teacher will rapidly learn that he is no longer appreciated, and this realization will undermine his own

“enormous potential to inflict harm.”¹⁷¹ Moreover, it is argued that law teachers have unusual needs to express aggression in socially acceptable ways.¹⁷² The proponents of Socratic teaching, however, are skeptical of the assertion that the hostility generated by this method is significantly destructive to the students and argue that it has distinct pedagogical advantages in sharpening analytic skills and developing the ability to participate in an oral adversary exchange under pressure.¹⁷³ It also is probable that any highly interactive form of teaching which is used in a period when a “group identity” among students is coalescing—as in a freshman law class—will inevitably generate some hostility. At least in theory, however, this hostility need not be destructive to students or teachers; instead efforts should be made to channel this emotional energy into intellectually valuable outlets.¹⁷⁴

There is little evidence concerning the extent to which the hostility perceived by students in the classroom is caused by the Socratic method, as opposed to other phenomena previously discussed. If it is true that law students are generally preoccupied with the management and use of aggression, restive in the prolongation of adolescence that the student role implies, and confronted with uncertainty, anxiety, competitiveness, fear of failure, and unsatisfying peer relationships, then it does not seem unreasonable to suggest that the Socratic method may simply be a highly visible target for formless, pervasive student resentment.

Contemplation of the total emotional environment of the law school is a new and unsettling concept for most law teachers. In a sense, emotional issues touch upon the conflicts and dilemmas created by the law school's dual role as both an academic institution and a training school for professional practitioners. This pervasive problem is evident in the longstanding debate over the proper role of the law schools in training students for ethical behavior and professional responsibility. The psychoanalytic critics are now as-

sense of purpose and self-esteem. Even in Kennedy's terms, the professor's aggressive style must be functional for him, not just because he hurts people, but because his students respect and admire his adversary skill and accept it as a role model. Thus, the professor's “satisfaction” in the classroom is in some measure inextricably linked to the approval of students and their willing participation in the Socratic ritual. That the professor needs his students' eager participation and appreciation in class is a lesson that many professors have learned in the past few years, some in a way that has been painful to observe.

Id. at 414.

¹⁷¹ *Id.* at 412.

¹⁷² See text accompanying notes 218-19 *infra*.

¹⁷³ See Stone, *supra* note 129, at 410-14.

¹⁷⁴ *Id.* at 412-13.

serting that ethical behavior is much more of an emotional than a rational matter: the intellectual exercise of defining the applicable facts, principles, and competing interests in an ethical problem situation is only a first step, and one that may easily lead to unethical action if it is not supplemented by a proper emotional response to conflicting loyalties.¹⁷⁵ Moreover, sociological commentators have expressed doubt that the law schools can effectively "socialize" their students to behave ethically in later years when they encounter situations in practice where institutional and group forces create pressure toward unprofessional conduct.¹⁷⁶ Yet, even if one focuses solely on the intellectual content of professional responsibility, the question arises whether inculcation of principles officially sanctioned by the organized bar is consistent with the scholarly ideals of academic freedom¹⁷⁷ and free, open, skeptical inquiry. As Brainerd Currie has put it:

It is a perversion of [a university's] facilities to use them primarily and directly as an element in a policing scheme, especially when the standards of conduct involved are prescribed very largely by a relatively small group. It seems clear that rules of legal ethics, no matter how sincerely they are framed, can express the public interest only as that interest appears to lawyers, so long as they are framed by lawyers.¹⁷⁸

¹⁷⁵ Dr. Watson is the most vigorous advocate of this view. In oversimplified terms, his thesis is that lawyers are inclined by temperament and training to deal with problems intellectually rather than emotionally, even to the point of using "intellectualization" as a rationalization or defense mechanism; thus, they blind themselves to their own emotional needs and those of their clients, and often behave inappropriately. *See generally* notes 89-90 *supra*.

¹⁷⁶ *See generally* J. Shultz, *supra* note 96. One of the major conclusions of this study was stated in the following terms:

[O]ur results do not support the notion that modern professional schools accomplish extensive professional socialization which homogenizes students to a common core of professional attitudes. Rather, our results suggest that homogenization occurs only among a small elite group of students. It is as if the increasing segmentation of the profession, coupled with the low power of the school as a socializing institution, have led the school to retrench. Rather than attempting homogenization of all students, the school homogenizes a small group of students, selected by high academic standing and faculty contact and approval. For the majority of students, however, the school period is merely one stage in a continuous process of career differentiation [accompanied by differing ethical and professional values].

Id. at 244; *see* Thielens, *The Influence of the Law School Experience on the Professional Ethics of Law Students*, 21 J. LEGAL ED. 587, 591 (1969) (finding, *inter alia*, that law school class of 1964 at four law schools "was just 6.4% more likely to adopt an ethical stance at graduation than it had been at entrance").

¹⁷⁷ *Cf.* Starrs, *Crossing a Pedagogical Hellespont Via the Pervasive System*, 17 J. LEGAL ED. 365, 375-76 (1965).

¹⁷⁸ Currie, *Reflections on the Course in the Legal Profession*, 22 J. LEGAL ED. 48, 50 (1969).

A better understanding of the emotional dynamics of law study will assist in making many curricular decisions, but is unlikely to foreclose debate. Even if the competitive, hostile, and anxiety-ridden atmosphere described by some commentators could be documented and shown to have a significant effect on the selection and personalities of lawyers, there would still remain a question whether the resulting characteristics have long range value for the profession. The literature on professionalization emphasizes that all professions that exhibit "strong attention to standards of competence and performance and to identification with the occupation as a collectivity" employ "a punishment-centered theory of socialization" that accords a prominent position to competitive success and failure:

The initiate is put through a set of tasks and duties that are difficult, and some are unpleasant. Success is accorded to most of the entrants, but not all; failure is a realistic possibility. These challenging and painful experiences are shared with others, who thus have a sort of fellowship of suffering.

. . . .

Although not essential to the theory, some additional and associated features of "punishing socialization" may be noted. Some of the difficult tasks are commonly ritualized and in that sense arbitrary. . . . Marks of success, too, are commonly ritualized: awards, election to honorary fraternities, certificates, and diplomas. Yet the punishment does not stop so quickly, at least for occupations high on the scale of professionalism. The medical intern does the medical dirty work around a hospital; the young lawyer does the dirty work around a law firm, or, for that matter, if he attempts to establish an individual practice. . . . And although greater freedom follows successful survival of trials, the *persistent* possibility of failure is characteristic of most professional and technical occupations. . . . [T]his is an important ingredient of continuing occupational commitment.¹⁷⁹

Beyond this general function of competition, success, and failure in transforming the surviving laymen into professionals, the emotional environment of the law school has other implications unique to the legal profession. The existence of an "absolute meritocracy" in the law schools may have intangible but nonetheless significant value in a profession which provides a large proportion of government, community, and business leaders. Competitiveness and pressure in law school may be desirable training for a profession which relies primarily on adversary contests to find

¹⁷⁹ W. MOORE, *THE PROFESSIONS: ROLES AND RULES* 77-78 (1970).

truth and resolve disputes. On the other hand, the atmosphere of conflict and competition in the law schools may be an impediment to the development and use of more harmonious forms of social ordering. Research on the effects that law schools have on their students will not provide any conclusive answers to these questions, but at least it can narrow the range of hunch, guesswork, and supposition.

2. *Law School and Skills Training*

One of the most important aspects of the student's experience in law school is the acquisition of the lawyer's skills. The problem of defining, analyzing, and teaching legal skills is one that has long troubled the profession for several obvious reasons.¹⁸⁰ 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. Unfortunately, it remains true that "at no time in the history of legal education since it was taken over by law schools has there been a comprehensive, systematic investigation of what lawyers do, made for the specific purpose of curriculum planning."¹⁸¹ 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."

Clearly, a more specific categorization of skills is necessary, but how much more specific? For example, is it useful to lump the officework aspects of law practice which are not related to litigation, drafting, or lobbying under the broad term "counselling"? Or should this function be broken down into constituent parts, such as ability to determine "safe bedrock-law,"¹⁸² interviewing techniques, negotiating skills, knowledge of social institutions for referral purposes, and the like? Doubtless each of these component categories could be further divided, and this process of subdivision and particularization makes it extremely difficult to distinguish between

¹⁸⁰ See notes 35-37 and accompanying text *supra*.

¹⁸¹ Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7, 15 (1968).

¹⁸² Llewellyn, *supra* note 35, at 361.

“skills” that are common to a substantial segment of the profession, and “operations” that are unique to a particular lawyer or law office.

Finding a meaningful stopping point on this slippery slope is only the first step of the task. In evaluating the present practices of legal education, the question is not merely whether a particular skill, however defined, is necessary or desirable for the practicing lawyer; there are also the issues of whether the law schools *can* teach it, and if so, whether they *should*.

The question of what the tasks are to which law schools should devote their limited educational resources, is frustratingly complex, even if one assumes that the primary mission of the law schools is to prepare people for the practice of law. Considerations of wise use of resources, the difficulty of acquiring a skill in practice when compared to acquiring it in law school, the number of students who may need it, the availability of faculty members willing and able to provide the necessary instruction, and many other factors relating to feasibility and efficiency must be assessed. A time factor must also be considered: are students being prepared for more immediate tasks such as bar exams or initial employment, or for adaptability to the now unforeseen legal problems of the future? Because the professional careers of nearly all law graduates will span several decades, many law schools have assumed an obligation to equip their graduates not only for the practice of law as it now exists but also for the demands of the unpredictable future.¹⁸³ Moreover, focusing solely, or even primarily, on “practical” skills does a disservice to the student and the profession.¹⁸⁴ According to

¹⁸³ The medical profession has been much more aware of this problem, undoubtedly because the rapid pace of innovation has been much more visible in medicine. *See, e.g., Austen & Kinney, The Content of Undergraduate Medical Education*, in *THE FUTURE OF MEDICAL EDUCATION* 71, 73 (J. Graves ed. 1973):

A generation ago the student left medical school with a body of knowledge that was not technically obsolete for twenty years, but today much of the information he acquires is obsolete before he completes his residency. . . .

The only practical solution is to prepare each student so that he will be able to acquire new scientific information when he needs it. This means that he must learn to evaluate critically the worth of new information as well as its applicability to the problem at hand.

Social and technological changes affecting the lawyer's function may be no less rapid or extensive, but simply more difficult to discern.

¹⁸⁴ One of the most forceful articulations of this position was provided by a law student: [One type of “typical law student”] learns a good deal of law, though much of it is understood in a particularly narrow way. The great unifying threads—philosophic, moral, intellectual—which draw apparently disparate areas together and give the law much of its fascination and much of its power are only indistinctly perceived, if at all. He also absorbs a quantum of . . . rhetoric, and accepts, whether he knows it

this view, the law school years represent a unique opportunity to seek a broader understanding of the law, its history, values, and philosophy, and its functions in our society. Indeed, students who acquire this deeper appreciation of the law may be better equipped than their more "pragmatic" contemporaries to serve the public interest and to adapt the legal system to the demands of a changing society. As in Langdell's time, the more theoretical legal education may also be the most practical.

The verbal conflict between adherents of the traditional law curriculum and proponents of a curriculum stressing skill, insight, and operational learning is often cast in pejorative terms that conceal underlying realities. On the one hand, the claim of the traditionalists that Socratic discussion of appellate judicial opinions conveys an understanding of the history, values, philosophy, and functions of law is true only if the class is in the hands of an excellent teacher who brings this breadth and depth of background into the classroom. In the hands of journeymen teachers, discussion of the facts, holding, and rules of an endless succession of cases is a narrowing experience that numbs the student to broader issues and perspectives. On the other hand, the clamor on the part of short-sighted students and some practitioners for more practical skills training exposes those who favor curricular revision to charges of "trade school" approaches and anti-intellectualism. Although those labels may be appropriately applied to some of the attempts at revamping the law curriculum, they are a caricature of the views of the abler advocates of skills training. These advocates favor emphasis on skills, roles, and lawyer operations precisely because exercise in the application of legal theory to legal problems is a broadening experience that promotes effective learning of ideas. They argue that the student who is involved in law school in the process of acting like a lawyer receives a far greater understanding of its history, values, and functions than he would if exposed only to case-class discussion. Neither approach, of course, need monopolize the entire law curriculum; the crucial question at this time is the appropriate balance and integration of two powerful instructional methods.

or not, a mass of legal knowledge which is riddled with the unexplored moral and philosophical biases of his teachers. . . .

. . . In fact, he is "brainwashed" in a quite real sense: his head is filled with notions he barely understands but which he will use every day of his life as a lawyer, often with enormous effect, for good or evil, on the lives of totally dependent people.

Kennedy, *supra* note 149, at 76-77.

While "customer satisfaction" cannot be the sole basis for judging the efficacy of legal education, it is not irrelevant. Recent surveys reveal extensive student and alumni dissatisfaction with the skills training provided by their law schools. Stevens's studies, focusing on the classes of 1960 and 1970 at four law schools, found that although the more recent students were more inclined to think that their law schools deemphasized "black letter" law, they still believed that their schools should give even less emphasis to imparting knowledge of substantive and procedural doctrines.¹⁸⁵ In general, the respondents from the class of 1970 also felt that the law schools were devoting insufficient attention to legal research and writing, communication skills, oral advocacy, ability to negotiate and arbitrate, and fact investigation—in short, that "law school should teach more 'practice' skills."¹⁸⁶ Although there seemed to be little desire for more extensive instruction in legal philosophy, a substantial proportion of recent students felt that the law school should give greater emphasis to the determination of desirable policy goals and the utilization of legal techniques to achieve those goals.¹⁸⁷ Finally, there was some interest in greater training in legal ethics, but this interest apparently declined over the decade.¹⁸⁸ The findings are generally in accord with the results of the Harvard and Stanford alumni questionnaires.¹⁸⁹ Perhaps the most disturbing finding from this research on skills development, however, came from Stevens's in-depth interviews with freshman law students at Yale: after ten weeks of law school, the students were unable "to describe precisely the content of the 'skills' to which they claimed to have been exposed," and had "no clear definition . . . of the purposes of legal education."¹⁹⁰

¹⁸⁵ Stevens 594.

¹⁸⁶ *Id.* at 595.

¹⁸⁷ *Id.* at 596-97.

¹⁸⁸ *Id.* at 597.

¹⁸⁹ One question on the Harvard survey provided nine possible changes in emphasis for the law school program. The proposed change eliciting the most alumni agreement was that the curriculum "[s]hould be more oriented to the practical problems encountered in practice," endorsed by 43% of the respondents; 35% endorsed the proposition that the law school "[s]hould add forms of training other than course work." Harvard Alumni Survey 17.

The Stanford questionnaire asked whether the law school was preparing its recent graduates "very well," "adequately," or "not well" to meet the lawyer's responsibility in nine areas. The topics receiving the highest proportion of "not well" responses were "to try cases," "to prepare cases for trial," "to negotiate and bargain on behalf of clients," and "to have a good grip of major issues facing our society." Stanford Alumni Survey 10.

¹⁹⁰ Stevens 637. Stevens notes several possible explanations for this finding:

The law school may have poorly performed its attempt to impart whatever is involved in "thinking like a lawyer" because the faculty failed precisely to identify those skills. Consequently, the respondents may have accepted on faith that they

A major shortcoming of these studies, aside from their limited data bases and divergent research methodologies, is the fact that they have encompassed only a very limited range of possible responses, comprising skills which almost everyone would agree a practicing lawyer should possess. To provide a complete picture of the ways in which law students, alumni, or others perceive and define the lawyer's skills, it is desirable to include abilities that seem peripheral to legal work, such as good judgment, creativity, or a pleasing personality, as well as some skills which seem utterly unrelated to successful law practice. Of the future law students surveyed in *The Graduates*, nearly one-half agreed with the statement that law "requires a great deal of creativity"; almost as many believed that "success depends largely on a pleasing personality"; and a substantial majority—sixty-eight percent—thought that the profession "[h]as a rather rigid but unwritten code of social behavior."¹⁹¹ Do practicing attorneys agree with these judgments of what is needed to succeed as a lawyer? If not, when and how do the perceptions change? In view of the importance that goals, particularly student perceptions of goals, have in the educational process, research on changing perceptions of the skills and characteristics of the good lawyer would be valuable.

A more modest approach to the skills question is to focus on the various testing or certifying devices used to establish legal competence. This is the basis of a cooperative project recently undertaken by the Law School Admission Council, the National Conference of Bar Examiners, the Association of American Law Schools, and the American Bar Foundation. The first phase of this project is concerned with the various certification mechanisms through which students move toward legal careers: prelaw grades, the LSAT, law school grades both in the first year and overall, and bar examination results, both in their multistate and individual state forms. The methodology in the first stage is a relatively straightforward attempt to find correlations among the various certification devices in order to determine whether they "constitute a mutually supportive series of significant observations which bear on an individual's probable competence to practice."¹⁹² In other

were learning skills because they were in law school. Alternatively, the quality of the responses may only indicate that oral responses to definitional questions tend inherently to be imprecise. One may also posit that, after only ten weeks of law school, students have not yet firmly grasped concepts on which they have developed some intuitive hold.

Id.; cf. text following note 43 *supra*.

¹⁹¹ BAIRD 58.

¹⁹² J. Winterbottom, *The Argument for Participation*, Jan. 12, 1973, at 2 (unpublished memorandum on file at the *Cornell Law Review*). This memorandum was part of a body of

words, if the various testing devices do measure the same qualities and characteristics, it may be reasonable to infer that they are testing abilities which are relevant to professional competence.¹⁹³ On the other hand, circular reasoning is involved when one testing mechanism is validated by comparing it with others rather than with the crucial factor of performance as a lawyer. The second stage of this project, which promises to be more difficult but more significant, will attempt to develop methods for measuring elusive factors such as "professional competence," "success," or "quality of performance" among practicing lawyers. This will not, of course, provide any direct or conclusive answer to the question of what skills a lawyer needs, but it may open new perspectives for further research on this basic problem.

3. *Learning and Teaching*

In addition to further illumination of the essential competencies which are a goal of legal education, information is needed concerning the processes by which law schools impart, and law students acquire, proficiency in legal work. Traditionally, concern has centered on the classroom and, to a lesser extent, the law review and the legal aid clinic. More recently, however, survey research findings have appeared which suggest that this may be an unduly narrow and artificial approach. Both the Harvard and

materials circulated to organizations interested in the testing and certification of law students to encourage participation in a cooperative study program. A fuller description of this proposed study may be found in another memorandum accompanying these materials. See A. Carlson & C. Werts, Proposal: Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results (Educational Testing Service, Feb. 1973) (on file at the *Cornell Law Review*).

There have been a few rather limited studies of correlations among several kinds of testing devices, and the factors affecting performance. See, e.g., Klein & Hart, *Chance and Systematic Factors Affecting Essay Grades*, 5 J. EDUCATIONAL MEASUREMENT 197 (1968). Compare Coolsby, *A Study of the Criteria for Legal Education and Admission to the Bar*, 20 J. LEGAL ED. 175 (1967), with Winterbottom, *Comments on "A Study of the Criteria for Legal Education and Admission to the Bar," An Article by Dr. Thomas M. Goolsby, Jr.*, 21 J. LEGAL ED. 75 (1968).

¹⁹³ Winterbottom's unpublished memorandum states this rationale in somewhat different terms:

[T]he measures [used in certifying legal competence] were developed by groups of legal educators and practitioners all of whom were well situated to have valid opinions as to what constitutes competence for practice; scattered evidence indicates that, as would be expected, these measures do correlate significantly with one another. . . .

J. Winterbottom, *supra* note 192, at 2.

However, it also seems possible that performance on the various testing devices would reflect general intelligence, test-taking sophistication, or writing ability rather than legal proficiency. An attempt has been made to evaluate these "extraneous" factors in law school grades. See Klein & Hart, *supra* note 192, at 197.

Stanford alumni questionnaires sought opinions from their graduates about the attributes and features of the law school which made significant contributions to their legal education. In both surveys, faculty teaching and the Socratic method ranked high in alumni estimation; yet, as a partial tabulation of the results shows, graduates of both institutions attributed great importance to the educational effects of their fellow students and to the values of independent work. Well below one-half of the former Stanford students, and less than one-third of the Harvard alumni, indicated that association with faculty members outside of class had made any positive contribution to their legal education; at neither school did as many as ten percent of the respondents believe that informal contacts with faculty contributed substantially to their educational experience in law school.¹⁹⁴

Other empirical evidence, notably Stevens's work, suggests that, if anything, these figures may overestimate the influence of the formal law school curriculum in shaping future lawyers. The alumni surveys contain the opinions of all living graduates who responded to the survey, and thus may poorly reflect current perceptions. Stevens found that within the past decade the students at his sample schools evidenced markedly less respect for the quality of law teaching, and were less inclined to describe law school as more difficult than college¹⁹⁵—perhaps a reflection of the law schools' failure to keep pace with the rising intellectual abilities of their students. More to the point, Stevens also found that, over the course of the law school years, student interest and involvement in classwork drop off radically¹⁹⁶—no secret to most law teachers, but rather startling to see statistically demonstrated in such a striking manner. At all of the schools studied, the quantity and quality of course work done by students exhibited a similar pattern:

A relatively high level of initial involvement falls off quickly after the first semester to an intermediate level. Then usually in the third or fourth semester, there is a more gradual decline in involvement, followed by a "leveling off." . . . Students appear to reach this equilibrium at a low level of involvement when, at the end of the second year, they believe that they have mastered the basic challenges of law school.¹⁹⁷

¹⁹⁴ See Harvard Alumni Survey 15-16; Stanford Alumni Survey 6-7.

¹⁹⁵ Stevens 587.

¹⁹⁶ *Id.* at 652-59.

¹⁹⁷ *Id.* at 654. Some of the specific statistical findings were reported as follows: Nearly three of every four law students completed at least eighty percent of their assignments on time during the first semester, and almost nine in ten attended eighty percent of their first semester classes. By the fifth semester, rather cavalier

"By the fifth semester," Stevens concluded, "many students have the equivalent of a two-day work week and discuss their studies rarely, if at all. At least intellectually law school appears to be a part-time operation."¹⁹⁸

Assuming that these data are representative of law schools generally,¹⁹⁹ there appear to be several possible explanations for the trend. The most obvious and plausible is that many students simply become bored at the lack of challenge during the second and particularly the third year of law school. The pedagogical juices of the case method have largely been squeezed out after the first year of the traditional curriculum; the insistence of many law teachers on repetition of these same teaching and learning patterns in the second and even third years numbs and bores many students, at least when presented by mediocre instructors. The brilliant classroom performer, of course, can get away with any teaching method, whether it be straight lecture, Socratic discussion of cases, or variations of the problem method. At some point during the second year, many students come to the conclusion that they have mastered the basic techniques of classroom dialectic and case or statute analysis, and a perception of diminishing returns leads to diminishing efforts. Thus, the law schools may have

work habits were apparent. Only three in ten students completed eighty percent of their assignments on time, fewer than seven in ten completed eighty percent of their assignments before examinations, and less than half attended eighty percent of their classes.

. . . By the fifth semester one in five students attended less than half of their classes, and more than one in ten completed less than half of their assignments before taking examinations.

Id. at 652-53.

¹⁹⁸ *Id.*

¹⁹⁹ Stevens notes the existence of prior studies dealing with other types of higher education which parallel his findings of a "rapid, followed by a slow, withdrawal" of student effort and involvement. *Id.* at 658-59. Of course, the fact that a phenomenon is common does not necessarily mean that it is inevitable.

One possible ground for questioning the Stevens results is the fact that student effort and involvement are measured primarily on the basis of student time investment, without any qualitative judgment as to whether the time is used well or productively. For example, most law school graduates can remember other students who attended classes regularly and spent long hours reading cases, but were not truly "involved" in the sense of mastering concepts and material. *Cf.* Patton, *supra* note 137, at 22-23:

Two frequent complaints mentioned by the student with a lower first-year average were his inability to concentrate and to settle down to his studying. That is he seemed unable to use the time for study available to him effectively. . . . The higher-achieving student gives evidence of the organized use of time

. . . [T]he students with higher grades [also] had more effective methods for finding and understanding what was important in their reading and in doing so they seemed to have developed methods of slowing down the process of forgetting.

ignored a basic principle of learning theory in failing to provide a coherent sequence of increasingly more difficult goals for students to attain as they progress through the curriculum.²⁰⁰

Stevens's data offer some support for this hypothesis. During the first semester of the first year, when most of the students in the sample were tense, aware of competitive pressures, and generally feeling some anxiety about the law school experience, there was a correspondingly high level of involvement in course work. After first semester grades were received, students who had performed well felt less tension, and this relaxation was manifested in their course work. On the other hand, students who had done poorly on their first set of law school examinations tended to remain tense during the second semester and to maintain—but not increase—their average amount of study time.²⁰¹

Another related explanation for the withdrawal of effort is that after the first year students begin to shift their focus farther ahead in time, and gauge their course participation by the extent to which they believe a course will impart skills and knowledge that they will need for practice. As the student acquires a mastery of traditional case and statutory analysis, he grows dissatisfied because he increasingly realizes that clients do not pay solely to have judicial opinions parsed for them and that there is much, much more to the intellectual and emotional development of a competent lawyer than is to be derived from a routine case-class course. If particular courses or the curriculum as a whole cannot satisfy these needs, students may devote their energies to extracurricular or work activities that seem more useful. Again, Stevens offers some support for this hypothesis: students who worked in legal positions during the summer vacation following the first year reflected a

²⁰⁰ Cf. J. BRUNER, *supra* note 43, at 30, 35:

[C]ognitive or intellectual mastery is rewarding. It is particularly so when the learner recognizes the cumulative power of learning, that learning one thing permits him to go on to something that before was out of reach

. . . . A curriculum should involve the mastery of skills that in turn lead to the mastery of still more powerful ones, the establishment of self-reward sequences. . . . The reward of deeper understanding is a more robust lure to effort than we have yet realized.

²⁰¹ Stevens 656-57; cf. Redmount, *supra* note 38, at 150:

Anxiety is both a stimulant and a deterrent to learning. Anxiety attaches to motivation where there are standards and requirements to be met, as in work stipulations and examinations. A modicum of anxiety in the student reinforces the need to perform and is useful. On the other hand, an excess of anxiety, whether from personal or pedagogical sources, shatters confidence, incites fear and may inhibit or prevent performance.

faster decline in interest or involvement than those who held nonlegal summer jobs.²⁰²

Clearly, more information would be useful in evaluating the possible effects of practice orientation—particularly some reliable data about what students do with the time and energy “released” by their withdrawal from the curriculum. Does it go into moot court competition, or work in a nearby law office, or is it “lost” in front of television sets and over interminable bull sessions or bridge games in the student lounge? The larger law schools offer a great smorgasbord of legal and nonlegal activities to their students, and university communities and metropolitan areas multiply these attractions. A more complete picture of the patterns of law student activity, and data about student judgments regarding the educational value of various curricular and extracurricular experiences, would illuminate and inform curricular planning.

Another factor which may help to explain the general pattern of decreasing student involvement in the law school curriculum is the influence of group pressures among students. The famous study of medical students, *Boys In White*,²⁰³ found that “student culture” and group interactions played a major role in determining the “levels and directions of effort” expended by students. One finding in the Stevens study is consistent with the experience in medical schools: freshman law students who had frequent contacts with upperclassmen tended to slack off on course work more quickly than those who did not associate with older students.²⁰⁴ However, this finding by itself does not suggest either the mechanism by which the older students influence the younger,²⁰⁵

²⁰² Stevens 658. He emphasizes that there are several possible explanations for this finding:

This could mean, of course, that potential lawyers are “turned off” by exposure to their chosen field. On the other hand it may be that summer legal jobs take the place of the third semester in accelerating the decline in involvement. . . . But it is equally possible that “real world” experiences in the legal profession are so exciting that the “artificial world” of law school begins to become dull by comparison. Similarly, summer employment may induce students to believe that they can function adequately as lawyers without further formal legal training.

Id.

²⁰³ H. BECKER, B. GEER, E. HUGHES & A. STRAUSS, *supra* note 161 *passim*.

²⁰⁴ Stevens 657.

²⁰⁵ *E.g., id.*

Relying upon role model theory we might say that “initiates” coming into the system are likely to imitate the behavior of those whose roles they are about to occupy. Or we may hypothesize a more explicitly utilitarian mechanism whereby the students say, “They seem to be making it with less effort, so why not me?”

or the reason why decreasing effort is part of the student value system.

Finally, it may be useful to consider student withdrawal of effort in terms of the psychological forces and emotional incentives that seem to operate in law school. If it is true that "[t]he energy of learning is provided by basically emotional processes,"²⁰⁶ then it should be possible to discern factors which begin to dissipate this energy after the first year of law school.

The decline in anxiety as a motive force for learning after the first year has already been noted.²⁰⁷ In addition, several commentators have emphasized the great importance of the first-year grade-point average in determining law school status and success. Those who do not attain outstanding grades in their first-year courses may feel, with some justification, that they are "second-class citizens."²⁰⁸ In psychological terms, this inferior status may be a threat to the students' "ego-ideal," a loss of self-esteem accompanied by unhappiness, depression, and disengagement from classroom work.²⁰⁹ In this view, the law schools do not provide average or poor students with the necessary aid and incentives to recover from this loss of self-esteem and to again become involved in the learning process:

The pattern of disengagement . . . could be overcome by the student's adaptive, if painful, readjustment of his ego-ideal. He could point to the future and set his sights on developing a degree of professional competence—a goal which would naturally lead him into classroom participation at least to the extent that he saw classwork as helpful to his future professional career.

. . . Working through such a loss of self-esteem in part depends on the capacity to adjust one's aspirations, and this in turn depends on the availability of acceptable role models and peer group approval of these models. Working through also depends on the possibility of ego activity as opposed to the ego's sense of helplessness. . . . The tragedy is that the faculty in its insistence on "academic rigor" is perceived as accepting only one form of achievement as authentic. . . . The faculty, therefore, . . . seem to be forcing the student [who attempts a different form of achievement such as clinical work] back into the situation in which he knows he is a loser—the competitive meritocracy.²¹⁰

²⁰⁶ Redmount, *supra* note 38, at 156.

²⁰⁷ See note 201 and accompanying text *supra*.

²⁰⁸ See Patton, *supra* note 137, at 49-50.

²⁰⁹ Stone, *supra* note 129, at 425-26.

²¹⁰ *Id.* at 426-27. Of course, these observations are based on a traditional grading and class-ranking system. It would be valuable to know whether innovations such as pass-fail

It is important to remember that the focus of these findings and critiques is the traditional mode of law school instruction based upon Socratic techniques, lectures, problem methods, and the numerous variations on these basic approaches.²¹¹ The growing popularity of clinical legal education within the past few years has sparked considerable speculation as to whether this approach might have distinguishing characteristics that would minimize the problems of boredom and disengagement which seem to plague traditional law teaching. Thus, the following advantages of clinical teaching have been suggested: (1) clinical teaching makes it possible to deal with a greater range of skills and abilities, thereby avoiding the repetitiveness of the normal curriculum;²¹² (2) clinical methods can draw upon the emotional dynamics of role adjustment and role obligations to provide new motive force for learning;²¹³ (3) the law clinic creates an atmosphere of camaraderie and cooperation between students and teachers, rather than polarizing the "two cultures";²¹⁴ and (4) the clinical opportunity to demonstrate competence in "real-world" situations can enhance and restore student

grading or abolition of class rank would produce markedly different effects in the student body. However, there does not appear to be any reliable data on this point.

²¹¹ For an illuminating discussion of the variations in traditional teaching methods, and the possibilities of classifying them in meaningful categories for empirical research, see C. KELSO, *supra* note 66, at 179-87. See also Gellhorn, *supra* note 32.

²¹² One of the most frequently emphasized aspects of clinical law teaching is, of course, its reputed advantages in training students for professional responsibility. For an interesting analysis of this factor, see Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, *supra* note 43.

²¹³ E.g., Bellow, *supra* note 20, at 383-84:

The sense of role obligation touches, in most students, a number of deeply ingrained motivational patterns. Two are particularly worth mentioning. First, the student experiences a "need to know." The knowledge that one will have to perform tasks in an unfamiliar environment produces an internally felt need for guidance for some framework within which he or she can make sense out of the experience, and cope with the anxiety unfamiliarity generates. . . . Secondly, the student experiences a need for justification of his or her conduct in the clinical setting.

²¹⁴ See, e.g., the following description of one clinical program from a law student newspaper, reprinted in CLEPR (Council on Legal Education for Professional Responsibility) Newsletters 1969-1972, at 218:

Good working relationships with fellow students and professors is another key to the program's success. Students eagerly help each other with cases. . . . [A] common desire to help clients and learn in the process produces cooperation.

Students praised the approach [that the two professors] have taken towards the course. According to [one student], the Socratic method is not used, and students get helpful answers to questions. One student said the professors "turned out to be much more friendly and accessible" than expected. Another, who was afraid of [one of the teachers] and "hated" him before taking Clinical Law, now thinks he's "great" and "fantastic." Students . . . are on a first-name basis with [the teachers].

self-esteem.²¹⁵ These claims are highly plausible, but thus far evidentiary support for them has been sparse. The coexistence in most law schools of clinical and traditional instruction in competition with one another provides fertile ground for deeper study.

IV

THE LAW TEACHERS

Although the amount of useful empirical information gathered about the characteristics of law students, and the effects of law school on them, has been relatively small, there is even less hard data about the other group of principal participants in legal education, the law teachers. In part, this may be due to the fact that the great bulk of writing about legal education is done by law teachers, who may be no more inclined toward critical self-examination than most groups. In any event, unless one takes the position that law faculties do little for their students beyond retaining them in custody for three years and giving them one more formal certification on the road to practice, it is evident that the activities and characteristics of law teachers greatly affect the future of the profession.

A threshold question is, what are the background characteristics and motivations of law teachers? Just as it may be unhealthy to have the law student population drawn from a narrow socio-economic class, it may be equally stultifying to the profession to have the ranks of law teachers filled by men who share similar social backgrounds and academic or work experience. Diversity in legal education may well be a more difficult goal to attain if most of the teachers have attended a handful of similar law schools, worked on the same law reviews, clerked for the same judges, and undergone a limited range and length of professional experiences.

There may also be significant changes in the characteristics of law teachers over time. The authors believe that within the past few decades there has been a notable decline in the proportion of new law teachers who have worked in private practice for any appreciable period, and a corresponding increase in the numbers who have had experience exclusively in judicial, governmental, or "poverty law" offices. At the same time, the intellectual background of many law teachers in terms of training in other disciplines, interest in pure scholarship, and the like has increased dramatically. At the

²¹⁵ See Bellow, *supra* note 20, at 392-93.

least, these hypotheses are worth testing through a sampling over time of the characteristics of law teachers. Changes in such characteristics are likely to foreshadow significant changes in course content, skills taught, and ethical and other views espoused, which may or may not be desirable. Even if this kind of change did not manifest itself in easily observable ways, such as curriculum offerings or teaching methods, it would have significant, albeit subtle, influences on the professionalization process. Behavioral scientists have emphasized that law students' identification with their teachers as models is one of the most important processes of learning.²¹⁶

A related inquiry concerns the motivation of lawyers to become law teachers, particularly when the choice may entail a loss of current or expected income. One approach to this question is to focus on "work values"—factors in the occupational setting which individuals find particularly rewarding or satisfying. Both the Harvard and Stanford alumni surveys contained questions on this general topic, and both produced surprisingly similar results; on the positive side, the lawyers emphasized their satisfaction with "intellectual stimulation," "variety of work," "independence," and working with people, while the principal complaints about legal work were "constant interruption," "lack of time to do a good job," "long hours," "pressure, tension, ulcers" and "triviality of problems."²¹⁷ Do law teachers, as a group, have markedly different perceptions of the good and bad aspects of law practice? Do they have other, more subtle needs that practice cannot satisfy but law teaching can?

Dr. Watson has observed that the law teacher can be aggressive with little possibility of counterattack: "[I]n contrast with the adversary situation in a courtroom, the professor may carry on an essentially one-sided battle, always able to be the ultimate judge and decision-maker."²¹⁸ Similarly, many of the jobs held by highly

²¹⁶ E.g., Redmount, *supra* note 38, at 150-51:

The process of professional identification is an important matter to be noted in pedagogy. . . . Teachers are at least tentative models for professional behavior and intellectual habits. The disputatious teacher encourages disputatious students. The emotionally sensitive teacher encourages emotionally sensitive students.

See also Patton, *supra* note 137, at 34-39; Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, *supra* note 154, at 141-42.

²¹⁷ Harvard Alumni Survey 18; Stanford Alumni Survey 7.

²¹⁸ Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 114. He also observes:

[Law professors] may vigorously criticize anyone and do it in the name of "intellectual exploration." . . . [T]his role facilitates the fulfillment of a personality need in a socially legitimated form. [This is a] process which psychiatrists call the *defense of*

talented law graduates before they become teachers—a judicial clerkship, or a position as some sort of “special assistant” to a high government official, or work as an associate in a large law firm under the tutelage of a senior partner—present the young lawyer with an opportunity to engage in aggressive advocacy behind the “shield” of his more eminent supervisor, who must take responsibility for the work product. If law teachers are unusually or destructively aggressive, the opportunities which they have to reward and to punish students would make this factor a matter of considerable concern.²¹⁹

Another major area of interest is law teachers' perceptions of goals and incentives. From a public interest perspective, the law school is potentially a multipurpose institution which can legitimately devote its resources to a variety of service-related activities, including training for the practice of law, scholarship and research, and direct public service, such as law reform activity by faculty members, participation in public interest litigation, or counseling. Allocations of priorities among these various functions are the result of individual preferences of law teachers, the time or resources available for nonteaching activities, the views of school administrators, and the group interaction among these variables that results in a climate of accepted, encouraged, and required behavior. As public funding assumes a larger role in legal education, it is essential to develop better understanding of what the law schools conceive their mission to be, and how the priorities of particular schools and of the law schools as a whole are established.

The question of goals and values is also central to the learning process. The educational goals perceived by the faculty and com-

reality, where a real goal may be used as a cover for an unreal and, by definition, neurotic purpose.

Id. (emphasis in original). See also Kennedy, *supra* note 149, at 75: “[T]he element of destructive aggression, of terrorism, in teaching law is a real ‘psychic good’ for the teacher.” But cf. Stone, *supra* note 129, at 413-14.

²¹⁹ Stone describes five different kinds of power which law teachers have over their students:

- (a) reward power, based on the professor's ability to disperse rewards in the form of high grades, desirable clerkships, letters of reference, etc.;
- (b) coercive power, based on the professor's ability to give low grades and damage future professional opportunity;
- (c) legitimate power, based on the normative perception that the professor has a right to prescribe behavior;
- (d) referent power, based on the students' psychological identification with the professor as someone they would like to emulate;
- (e) expert power, based on the perception that the professor has some special capacity to induce new and useful cognitive structure.

Stone, *supra* note 129, at 411-12.

municated to the students define the framework of the educational enterprise. Moreover, the law teacher's ability to reconcile the multiple and often conflicting demands made upon him may determine whether he performs his duties effectively.²²⁰ Survey research techniques could undoubtedly provide much useful information about what law teachers conceive their proper function to be—in terms of the skills and values taught to students and teaching methods used, the relationship of the law school to the university, and the public service obligations of legal education. Furthermore, it would be valuable to know how law teachers apportion their working time among the various professional activities available to them²²¹ and whether this time use corresponds to professed goals. Finally, it would be worthwhile to examine faculty hiring, promotion, and tenure policies with a view toward determining how these policies might influence faculty goals and incentives.²²² Undoubtedly, there are many other types of research on law teachers which can and should be done; but, absent the kind of basic information described above, it seems fruitless to speculate on what further avenues of research would be valuable.

V

THE PERSPECTIVE OF PRACTICE

Because the principal output of law schools is practicing lawyers, a natural subject of inquiry is what happens to law

²²⁰ Cf. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 638 (1968): "[T]he modern law teacher has been suffering from a kind of intellectual schizophrenia for the past twenty-five years—a schizophrenia which has him devoutly believing that he can be, at one and the same time, an authentic academic and a trainer of Hessians."

²²¹ One law teacher has published results of time-use records he compiled three different times at two-year intervals. The percentage of working time devoted to each category fell within the following ranges:

1. Administration and faculty activities	39%-43%
2. Course preparation, presentation and examination	27%-34%
3. Student relations	8%-13%
4. Research and writing	10%-18%
5. Community and professional activities	5%- 9%

Stubbs, *Only Nine Hours a Week!*, 21 J. LEGAL ED. 566 (1969).

²²² Some surveys of hiring, promotion, and tenure policies have been made, but apparently there have not been any efforts to determine how a particular policy or procedure might influence faculty opinions or behavior. See, e.g., SPECIAL COMM. ON LAW SCHOOL ADMINISTRATION AND UNIVERSITY RELATIONS OF THE ASS'N OF AMERICAN LAW SCHOOLS, ANATOMY OF MODERN LEGAL EDUCATION 132-250 (1961).

graduates as they become members of the bar and move into different work settings. Of particular interest are the educational experiences which young lawyers encounter in practice. The dominant assumption of American legal education, now being challenged by advocates of clinical law training, is that "graduates of law schools become fully capable members of the profession only through experience obtained after beginning practice."²²³ Yet, there is no data, at least in statistically supportable form, as to how or what law graduates learn in the early years of practice, much less any persuasive analysis of whether the law schools could effectively provide the needed training. It should not be difficult to generate basic information about what, if anything, employers do to train young lawyers;²²⁴ and the spread of clinical programs alongside the traditional law curriculum may make it possible to form at least some tentative judgments as to whether those who have had clinical experience in law school are significantly better prepared for their work experience.

Interest in the transition from law student to lawyer should include not only concern for the skills and substantive knowledge required, but also the more complex questions about emotional reaction, ethical behavior, and development of leadership abilities. In each of these areas, there is a small body of research, hardly conclusive but certainly provocative, which suggests that the profession may be doing a rather poor job in preparing its younger members. One study of recent law graduates found that they experienced a kind of "reality shock" on entering practice, brought

²²³ E. KITCH, *supra* note 19, at 5. Kitch further observes:

This premise can be criticized in many ways—clients suffer from the inexperience of the young but licensed lawyer, the experience is not available to all, it is poorly organized, or it is conducive to bad habits. But if the premise that law schools prepare men for immediate, full-fledged entry into the practice of law is denied, the force of the argument [for clinical legal education] is lost.

Id.

²²⁴ Word-of-mouth information suggests that the larger law firms and some government agencies employ a great variety of training approaches for new lawyers recruited from law school: "apprenticeship" training involving intensive work with an older lawyer who also has definite teaching responsibilities, a rotational program in which the new recruit works for fixed periods in various departments of the employing organization, orientation programs dealing with office practices or legal procedures, released-time programs for study outside the employing organization, and so on. Despite the obvious importance of these programs to the law school's teaching function and the bar's long-standing interest in continuing legal education, however, there has apparently been no attempt to evaluate these various types of training programs.

about by the discontinuity between their formal education and the demands of work:

The statement "I wasn't prepared" is made over and over again. Behind this plaintive cry one senses the disorientation and embarrassment experienced by men who were *formally* qualified to practice law, yet forced to reveal inadequacies, ignorance, and confusion before clients, employers, and friends. If we are correct in assuming that the self-concept crystallizes only where role performance is undertaken in a psychologically meaningful context, the law school years provide minimal opportunity for this development. Furthermore, its products complain in large numbers that they lack the skills—technical and social—needed to play even the beginner's role.²²⁵

Other researchers have noted "a progressive decrease in sensitivity and concern about the ethical ideals of professionalism in students from their prelaw days, through law school, and into law practice." This decline "remained constant until the lawyer had been in practice for a considerable time (well over ten years) and financial success had been achieved."²²⁶ Of similar effect is a sociological study which concluded that the tendency of lawyers to seek and hold positions of public leadership was apparently not a result of any qualities of mind or character developed in law school, nor of "charisma or any special talent for leadership"; rather, "their participation in politics seems to be simply a phase of a pragmatic search for an improved work situation and mobility within the profession."²²⁷ In the aggregate, these studies may present an overly deterministic portrait of how the young lawyer will react to practice; but they do provide some reason to doubt the assumptions that are commonly made about socialization and education in the early years of law practice.

²²⁵ Lortie, *supra* note 123, at 366.

²²⁶ Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, *supra* note 154, at 14-15. See also Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, *supra* note 38, at 134:

Without proper training for this task [of adhering to ethical standards], there is little else [the lawyer] can do except turn "cynical" and act as if he has no concern. . . . Most graduates of American law schools feel that they have had no help whatsoever in learning how to deal with "real life" at the bar. This stimulates considerable animosity which is directed toward their law schools

²²⁷ Hourani, *The Ecology of Legal Practice and Political Participation*, 22 J. LEGAL ED. 146, 167 (1969). However, it seems probable that at least some portion of lawyers' leadership propensity is attributable to the problem-solving orientation of their training, and their generally high self-confidence. Cf. text accompanying notes 125-27 *supra*.

Another aspect of the transition from law school to the bar that is deserving of further exploration is the manner in which young lawyers' career patterns develop. The variables which comprise a career pattern—geographic location, professional work setting, and subject-matter specialization—are relevant to a number of major issues in legal education. For example, the law curriculum and the bar examination are based at least in part on implicit assumptions about the kind of work that many young lawyers will be doing in practice—assumptions which may or may not correspond to the facts.²²⁸ Another common assumption, questioned by a few researchers,²²⁹ is that early work opportunities and subject-matter specialization are largely a matter of fortuity. If law students in fact exercise considerable free choice in career decisions and can accurately forecast the kinds of work they will be doing, specialization within and among law schools may be a more attractive prospect. The geographic mobility of law graduates—particularly the question of whether they tend to remain in the state where they attended law school—has serious implications for the future financial structure of legal education in tax-supported institutions or programs. If law graduates are highly mobile individuals who frequently settle in states far removed from those where they were raised or educated, then it becomes doubtful whether state or local governments should subsidize the parents or the departing student.²³⁰ Either the student should bear the major share of educational costs, or a larger degree of national funding may be appropriate. Finally, information about the development of young lawyers' career patterns provides one means of assessing whether the profession is meeting its obligation to reward talent, ability, and effort, rather than perpetuating discriminations based on race, sex, or socioeconomic class.²³¹

²²⁸ It merits emphasis that this kind of data could be a force for preservation as well as change. For example, the law student demands of a few years past for more "relevant" or "idealistic" law courses would lose some force if it could be demonstrated that students typically express idealistic feelings or reformist plans in law school, then settle rapidly into conventional legal careers.

²²⁹ See, e.g., J. Schultz, *supra* note 96. Schultz concluded that law students were significantly "differentiated" in terms of the kinds of work settings they anticipated, and that they were socialized to have different professional and ethical values, depending on the kind of work setting expected.

²³⁰ Cf. R. FEIN & J. WEBER, FINANCING MEDICAL EDUCATION: AN ANALYSIS OF ALTERNATIVE POLICIES AND MECHANISMS 131 (1971).

²³¹ There have been several studies, the most notable of which is Jerome Carlin's book, *Lawyers on Their Own*, which suggest that the practicing bar is stratified along class lines. See

VI

THE ECONOMICS OF LEGAL EDUCATION

Among all the unanswered questions, unsupported assumptions, and uncertain future directions of legal education, one proposition seems beyond challenge: financing the training of lawyers is going to be increasingly difficult in the years to come. If legal education is to continue to become more clinical, more research-oriented, and more individualized, it will also become more expensive.²³² Indeed, it seems likely that costs will continue to rise sharply even if law schools attempt to provide more of the same kinds of instruction that they have traditionally offered.²³³ Beyond this general escalation in the costs of education, the law schools' commitment to provide greater opportunities for minority and economically disadvantaged students will claim a substantial portion of tuition or other revenues.

In part, the financial constraints facing legal education today are a product of its unique history. The large-class, case method of instruction that has prevailed in the law schools for generations is notable for its low cost; it requires neither elaborate equipment nor an unusually extensive library, and it has survived on faculty-student ratios that would shock teachers at undergraduate colleges, much less those at graduate schools.²³⁴ Thus, the proponents of

also Ladinsky, *supra* note 122. Although the differences noted by Carlin and others do not constitute a persuasive demonstration that either the law schools or the bar have practiced systematic discrimination, it does seem clear that findings of this nature point up the need for better understanding of the ways in which the profession performs its "allocation" function of matching people with jobs.

²³² For a discussion of the costs of clinical legal education, see Swords, *Including Clinical Education in the Law School Budget*, in CLINICAL EDUCATION FOR THE LAW STUDENT 309.

²³³ E.g., PACKER & EHRLICH 67:

Professor Cheit, in his study for the Carnegie Commission entitled *The New Depression in Higher Education* (1971, p. 9), reports that at certain selected institutions expenditures for departmental instruction and research have for several decades risen "at the remarkably constant (compound) annual rate of 7½ percent, per student. Inflation accounted for only about one-fourth of this increase." This 7½ percent per student annual increase will probably continue throughout the coming decade. Twenty-seven percent of the institutions in Professor Cheit's study were in financial difficulty by his definition. At these schools, educational and general expenditures grew . . . at the compound average annual rate of 9.5 percent per student. There is no reason to believe that law schools, even remaining essentially stagnant, would have a significantly lower cost increase.

²³⁴ See *id.* at 64:

Most graduate departments usually have a faculty-student ratio of approximately 1 to 5, and medical schools function at 1 to 2 or 1 to 1; legal education functions normally at 1 to 20 or worse. Harvard Law School, for example, has . . . a 1 to 27 ratio.

increased law school funding must battle against the considerable inertia of history. Unfortunately, the current movement for innovation and experimentation in legal education also comes at a time when the universities are undergoing a prolonged period of retrenchment and belt-tightening, if not outright financial depression.²³⁵ Because the law schools cannot reasonably expect large new infusions of resources from their universities, they must turn to other possible sources: students, private donors, and government funding. Better understanding of the economics of legal education is essential if the support provided by any of these sources is to be increased substantially.

The recent practice of substantial yearly jumps in tuition costs, at both public and private law schools, is likely to continue at a rate at least equivalent to the growth in disposable family income. As tuition charges and other costs rise, access to the profession for the nonwealthy²³⁶ becomes an increasing concern, especially if scholarship funds do not increase as fast as educational costs. The most promising way out of this dilemma is to expand loan programs so that the student can spread the cost of his legal education over his early productive years following graduation. The rationale of this approach is simple and logical: money spent on legal education is an investment in human capital which will provide the recipient with an increased stream of earnings throughout his professional career. Thus, just as businesses repay their borrowings for capital equipment out of the additional revenues generated, the law student should be able to repay his educational expenses out of professional earnings.²³⁷ Because the private loan market has not made funds available in amounts and on terms which many believe to be socially desirable, law schools and government bodies have been developing extensive student loan programs.²³⁸ However, it is

²³⁵ See generally E. CHEIT, *THE NEW DEPRESSION IN HIGHER EDUCATION* (1971).

²³⁶ See, e.g., PACKER & EHRLICH 73:

Tuition at private schools . . . is beginning to push toward \$3,000 per year (and that does not include costs for living, books, and transportation). Recently the rock-bottom cost of a year at the good private law schools has been approximately \$4,500. State schools are beginning to turn toward the imposition of tuition, and their students must now incur high living costs and costs of books. Given these expenses, no law student, at least at a private school, can possibly finance the expenses of his education out of his current earnings.

²³⁷ E.g., G. BECKER, *HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS, WITH SPECIAL REFERENCE TO EDUCATION* (1964); M. BLAUG, *AN INTRODUCTION TO THE ECONOMICS OF EDUCATION* (1970); A. RIVLIN, *THE ROLE OF THE FEDERAL GOVERNMENT IN FINANCING HIGHER EDUCATION* (1961).

²³⁸ For a discussion of one such program, see Griswold & Toepfer, *Harvard's Experience*

generally true that neither the administrator trying to design a loan program, nor the student trying to decide whether to borrow, has enough information to make a sound and rational decision.

Ideally, the student who wants to attend law school but has to borrow in order to finance it would have access to a variety of data regarding the effects of legal education on lifetime earnings: how much, on the average, he could expect to earn as a lawyer, in comparison to other possible occupations; how the earnings are spread over the lawyer's productive career; how factors such as law school attended, class rank achieved, and area of country chosen affect earnings; and the like. From the educator's perspective, it would be helpful to have some indication of the manner in which economic considerations affect the decision to attend law school and the choice of law schools,²³⁹ as well as some knowledge of the extent and effects of preexisting debts incurred to finance undergraduate education. Efficiency of student loan programs could be enhanced by compiling data concerning the costs of administration and collection, and the loss experience encountered, under various existing aid systems. It could also be useful to explore some of the behavioral aspects of student loan programs, such as how students view the anticipated returns from legal education,²⁴⁰ and whether loan systems create career distortions by inducing loan recipients to

with Loans to Law Students, 17 J. LEGAL ED. 329 (1965). A description of the Student Loan Marketing Association, a government-sponsored private corporation designed to facilitate bank issuance of government subsidized and guaranteed student loans, may be found in *Washington Star-News*, July 17, 1973, § C, at 7, col. 1.

²³⁹ One aspect of this question which may be worthy of separate study is whether the widespread adoption of student loan programs in legal education might drive some students into other disciplines that are more generously funded. *See, e.g.*, Dean, *Who Pays the Bills? The Cost of Legal Education and How to Meet It*, 16 J. LEGAL ED. 416, 418 (1964):

If this method [of long-term borrowing] were applicable to higher education generally, its effect on legal education might not be too serious. Until it is so applied, however, its initial application to law might well accentuate the drift of an undue number of the best students to other disciplines—natural science, for example—where generous outright grants are already available.

²⁴⁰ *See, e.g.*, Schultz, *The Rate of Return in Allocating Investment Resources to Education*, 2 J. HUMAN RESOURCES 293, 303 (1967):

It is useful to distinguish between the *apparent behavioral horizons* of students and the *ex post horizons* underlying the estimates of rates of return. In thinking about the first of these—i.e., the investment horizon which will explain the behavior of students and schools—there are strong reasons for believing that it is, in general, fairly short. It is impossible to predict lifetime earnings; for the student to do so he would have to predict the changes in the demand for his type of education and the supply consequences of the decisions of others like himself to enter his particular field on his earnings up to 40 and more years ahead.

Of course, it is possible that the availability of better historical data about the effects of legal education on lawyers' earnings, as discussed above, would tend to lengthen this time horizon.

seek high-paying jobs after graduation rather than accepting less remunerative positions in government or community service. Finally, it is possible that more systematic knowledge about the human capital aspects of legal education would also have incidental benefits, such as attracting more private loan money into the market, or increasing the profession's capability to forecast future demand for legal services.²⁴¹

Even if student loan programs become widely available and private contributions to the law schools can be greatly increased, it still seems inevitable that the role of government in meeting the costs of legal education at both public and private institutions will greatly expand. At the federal level, this possibility was brought much closer to realization by the 1972 amendments to the Higher Education Act, which for the first time included law schools and law students in a variety of federal funding programs.²⁴² The increasing presence of government money in legal education means that all of the law schools will become deeply involved in the appropriation and grant-making process, and will have to make a persuasive case for continuing public support. In short, it seems likely that cost-benefit analysis will become a familiar fact of life for law school administrators.

This need not be a cause for alarm; properly used, cost-benefit analysis can be an enormous aid to rational decision-making and allocation of priorities. Yet, it is a technique which the law schools have been relatively slow to develop. In the field of graduate education, for example, the Carnegie Commission report on financing medical education²⁴³ and the "Gradcost Study" sponsored by the Council of Graduate Schools²⁴⁴ reflect considerable sophistication in applying the tools of "welfare economics" to graduate education. Nothing of similar scope has been attempted for the law schools, but at least there are some advantages in being a relative newcomer to the field: much of the basic theoretical work has already been done, and consequently the methodological problems should be easily manageable.

²⁴¹ For a discussion of the usefulness of the concept of rate of return on investment in legal education as a means of determining demand for lawyers' services, see Katzman, *There Is a Shortage of Lawyers*, 21 J. LEGAL ED. 169 (1968).

²⁴² Education Amendments of 1972, 20 U.S.C.A. §§ 1001-1150 (Supp. 1972).

²⁴³ R. FEIN & G. WEBER, *supra* note 230.

²⁴⁴ J. MCCARTHY & D. DEENER, *THE COSTS AND BENEFITS OF GRADUATE EDUCATION: A COMMENTARY WITH RECOMMENDATIONS* (1972); J. POWEL & R. LAMSEN, *ELEMENTS RELATED TO THE DETERMINATION OF COSTS AND BENEFITS OF GRADUATE EDUCATION* (1972).

Preliminary work on the costs of legal education at different kinds of institutions is already under way. A study of educational costs at nine law schools, under the direction of Peter Swords and Frank Walwer of the Columbia University Law School, will be published in the near future, and should point the way for further studies.²⁴⁵ To complement this work, more should be known about the benefits of legal education—not only the increased earnings of law graduates, but the “externalities” as well.²⁴⁶ The law has long been regarded as a “public profession” which provides a substantial proportion of leaders in government and the private sector, and offers many forms of uncompensated or undercompensated public service. Moreover, law schools contribute to the advancement of law through research efforts, and are increasingly involved in direct public service through various clinical programs. These are factors which need to be systematically accounted for in analyzing future funding arrangements for legal education. Fortunately, the American Bar Foundation has begun preliminary work on a study of the economics of legal education which may encompass both the human capital aspects and the cost-benefit issues in law training.

CONCLUSION

With such a large array of possible topics of inquiry, and only limited resources available, it is necessary to establish at least tentative priorities for future research on legal education. The task is an extremely difficult one since relatively few studies have been

²⁴⁵ For a preliminary report on this study, see Swords, *supra* note 232.

²⁴⁶ Some of the external benefits of medical education discussed by Fein and Weber (*supra* note 230, at 132-34) provide an interesting example of the kinds of factors that could be considered in relation to legal education:

1. The fact that an individual may include “the health of others in his preference function and would therefore be willing to pay in order that the health of other individuals might be improved through the receipt of health care”;
2. The possibility that “[t]he student may be less willing to forgo present income . . . than society, as a whole, would be willing to forgo present production in order to have more highly valued production in the future.”;
3. “It is possible that projections of the future [need for medical services] made by public bodies will be more accurate (and less conservative) than individual’s forecasts. [Therefore,] the public may wish to subsidize individuals’ educations in order to equate expected public and private returns”;
4. It may be desirable to create standby health care capacity to meet emergencies.
5. Subsidies may be necessary to create equality of opportunity to enter the profession.

undertaken in the past, and the better works in the field often serve less to provide answers than to open up new and interesting avenues of inquiry. Nonetheless, there are several types of projects which seem fundamental to developing a better understanding of the processes and problems of legal education.

Perhaps the clearest need is for greater knowledge of the economics of legal education. In some respects, this may appear to be an example of putting the cart before the horse; logically it is appealing to decide first what changes or reforms are necessary, and then investigate ways to fund them. However, because financial anemia underlies so many of the obstacles to the improvement of legal education, research is essential into the question whether legal education must forever be saddled with student-faculty ratios that may stand in the way both of more effective learning techniques and of a greater law school contribution to our understanding of law and the legal system.

As the costs of all forms of education climb and resources fail to keep pace, it will be increasingly difficult even to maintain the status quo. Yet, what many think are the most promising educational developments in the law schools, clinical education and interdisciplinary work, make much greater demands on available funds than do traditional methods of instruction. Moreover, a convincing argument can be made that the major difficulties in legal education have not resulted from a lack of good ideas, but rather from a lack of sufficient resources to implement known techniques. An obvious example is the perennial complaint that law schools fail to teach their students the basic skills of legal writing. This charge may be well founded, but it is also true that programs designed to improve writing ability require a heavy investment in teaching talent, and faculty-student ratios much lower than all but a handful of law schools presently enjoy. Even self-training for the students who are fortunate enough to work for law reviews or similar publications is an expensive undertaking that is heavily subsidized at most law schools. Systematic and rigorous examination of the relative costs and benefits of various instructional techniques is long overdue.

Creation of an ongoing statistical information system to provide demographic data about law schools, law students, and lawyers would also be of great benefit, not only to legal educators but also to the profession as a whole. The American Bar Foundation, as a continuing research organization devoted to the study of legal

institutions and the legal profession, is especially well qualified to perform this ongoing task in cooperation with other groups. A well-designed system would have multiple values and uses, such as discerning changes in the backgrounds and characteristics of law students as they occurred, assessing equality of opportunity to enter the legal profession, generating samples for more detailed studies, and facilitating a variety of social science research about lawyers and law students. Problems of individual privacy and possible misuse of data are real, but by no means insurmountable.

Another set of problems in legal education are those of defining and teaching the skills or competencies characteristic of the good lawyer. These are extremely complex problems which lie at the heart of the professionalization process and probably should be attacked through a variety of research strategies. A preliminary question is whether massive empirical studies are necessary in order to identify those doctrines, insights, and skills so universally necessary for competent lawyering that the law schools should provide a basic preparation in them whatever the nature of the practice of the law graduate. Legal education needs improvement now, and this information is essential to intelligent reform. Can such a composite be produced *a priori* by a representative group of the ablest teachers, practitioners, and judges, or must it await massive surveys of what lawyers do in practice? Quick and less expensive efforts might provide a workable foundation for curricular experimentation and would also suggest hypotheses for more leisurely and careful research.

The professionalization process may also be illuminated by research which focuses on the goals expressed by both teachers and students, to determine whether they have clearcut, shared perceptions of what the law school is doing to prepare students for their professional responsibilities. A complement to this study would be exploration of student and faculty time use, in order to gain at least some perspective on the role of the formal curriculum and peer-group interchange in the professionalization process. In addition, it would undoubtedly be valuable to investigate the early post-graduate experience of law students, with the goal of understanding more fully how the learning process continues or changes during the early years of practice.

The emotional environment of the law school seems to have significant implications for the legal profession, not only with respect to the ways in which students react to different teaching

methods and master what is taught in the law curriculum, but also in relation to qualities of character which may later affect their ability to serve clients well, to behave ethically, and to exercise leadership and responsibility in the community. Since understanding of the various emotional and sociological phenomena associated with legal education currently remains at a very low level, it is desirable to begin investigations with participant-observer studies, perhaps with teams of observers from different disciplines studying the educational environment at a small number of law schools selected to be representative of the spectrum of legal education.

Research concentrating on law teachers would also be extremely valuable. What types of law-trained persons turn to law teaching? What kinds of bias do they tend to bring with them? Are there variances in these respects between men and women, blacks and whites? Why do so many teachers adhere so strongly to the case method of instruction and resist experimentation in their own courses or in the curriculum as a whole? Are these characteristics, and the alleged aggressiveness of the law teacher, peculiar to the law school or are they found in all teachers who have captive audiences?

Undoubtedly many other worthy studies could be advocated or undertaken, and large-scale research projects invariably must make numerous changes and compromises in response to the financial resources and research personnel that are available. Improvements will also be dictated as researchers in this field engage in more informed dialogue and reflection. It seems undeniable, however, that there is a pressing need for better understanding of virtually every aspect of legal education.

"When we study law," Mr. Justice Holmes once observed, "we are not studying a mystery but a well-known profession."²⁴⁷ Nonetheless, a considerable amount of mystery still surrounds the processes of law study and the people who are involved in it. In large measure, this ignorance must be considered a matter of choice rather than necessity: the research tools are at hand, and enough pilot studies and experimental inquiries have been made to point the way toward a fuller understanding.

There are signs that the time may be ripe for realizing this promise. Legal education seems to be in the midst of one of the periodic cycles of self-examination and experimentation which

²⁴⁷ O.W. HOLMES, *The Path of the Law*, in COLLECTED LEGAL PAPERS 167 (1970).

make new directions possible; and both legal educators and members of the bar seem deeply concerned about the future of the law schools and the profession. If we seize this opportunity, it may be possible to begin building the stronger, more effective, and more responsive legal profession that will be necessary to meet the public needs of the future.