

Legal Education Past and Future: A Summer Carol

A. Kenneth Pye

Oliver Wendell Scrooge, Professor of Law, sat in his office contemplating his annual chore of reorganizing his notes for the fall semester. As he thumbed through the crumpled yellow pages, he began to think about the two decades he had spent in legal education and those that remained before he could engage full time in fishing and writing letters to poorly informed editors.

Inescapably, his memory summoned the ghost of legal education past—the period of his initiation, growth, and maturity as a law-school teacher. He recalled the era of expanding enrollments of the 60s and 70s, the increase in the number of women from a token handful to over a quarter of a class, the advent of significant numbers of minority students. With pleasure he remembered the impact of the applications boom on the law school as more and better students vied for admissions and attrition decreased. How much more pleasant it was to reject an application of a student in the top third of his class with an LSAT above the national average than to fail one out of three at the end of the year.

He wryly contemplated the annual salary increase, which in the 60s exceeded increases in the cost of living by significant margins, and still kept pace with the cost of living until the early 70s. His home, two cars, and annual vacation reflected a standard of living far above his initial expectations of academic compensation, though long since taken for granted as the rightful entitlement of a university professor.

He remembered the high morale of those halcyon years when colleagues in other disciplines envied the quality of students accepted to the Law School, the lighter teaching loads of law professors, the relative ease of publishing in what they at least regarded as learned journals. A professorship with tenure in those years was the recognized right of a law teacher who met the approval of his faculty colleagues, subject only to the rubber stamp of a university administration delighted with the high level of efficiency resulting from the Beale curriculum and the Langdell method as applied to classes of over a hundred. It seemed like a very long time ago that he and his colleagues could determine questions of admission,

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appointment, promotion, or tenure without hindrance from the university administration or the federal government, and with little need to satisfy the bench or bar about the number of courses in skills training.

Inevitably, as the ghost of the past transferred him to the ghost of the present, he found himself contemplating the stationary level of enrollment and applications. Quality, as measured by the indicia that in his youth were regarded as sacrosanct, had not improved for several years. No calculator was required to persuade him that salaries had for several years been lagging behind the cost of living and that his savings might not permit the kind of college education he wanted for his children. He pulled out his annual TIAA-CREF report and wondered yet again about a retirement plan predicated on the value of contributions and not indexed to inflation.

On his desk was a set of policies attempting to define affirmative action after *Baake*; eligibility for NDSLs, GSLs, and college work/study; a placement policy adjuring three-man law firms in small southern towns not to discriminate on the basis of race or sex; a reminder that students had access to confidential appraisals of their integrity and capacity in their files; a memorandum from the university president insisting that "affirmative action" be applied to ensure that "qualified" members of "underrepresented" classes receive preference over "overqualified" members of "overrepresented" classes while simultaneously treating all applicants without regard to race, sex, age, creed, or religion; a note from the dean that funds set aside for renovating a seminar room had been spent on three-prong electric plugs to comply with OSHA and on remodeling a rest room to comply with Section 504's requirement that facilities be accessible to the handicapped.

In the stack of newsletters from the AALS and the ABA were reminders that more than one Supreme Court believed it possessed an infallible guide for curricula; the Chief Justice and some other federal judges thought that adequacy of counsel depended upon law-school education in trial advocacy; the ABA had developed yet another standard expanding the scope of the accreditation process; and the American Council on Education was calling for self-regulation to avoid government regulations in areas that not even Joe Califano had dared to tread.

He recalled the last visit of the Provost and his comment that within the university there was increased pressure to apply the same rules of appointment, tenure, and promotion to law professors as to others. Grudgingly, Professor Scrooge admitted to himself that there might be some merit in this heresy since the law school's last appointment had been made after four more qualified persons had declined.

"Where will this all end?" he asked his spectral guide, or, more honestly he queried, "will the flame of your candle burn out before I do?" Once again, as he had done several times in recent years, he blamed himself for knowing so little about the future of the profession to which he had committed his life. Once again he prepared to rationalize that it was

probably too late for him to change directions now, even if he wished. Today, however, for reasons which he could not articulate, acquiescence to a fate beyond his control seemed less attractive than usual.

"Maybe," he hazarded, "it is not too late to do something constructive if I really spend a little time trying to understand areas outside the courses I teach. After all, changes in contracts and torts are unlikely to affect me or my family as much as changes in legal education during my last two decades."

The starting point, he recognized, was to summon the ghost of the future for a vision of those events between now and the dawn of the twenty-first century most likely to affect the shape of legal education. But the ghost had his own questions. What are the challenges facing legal education? What are the prospects for improving the quality of the student body? How can you best attract and retain able faculty? Which criteria will govern the conflicting priorities of introducing students to new research technologies while maintaining the quality of libraries? Where should the gift of foresight operate in modifying curricula to meet the needs of the next century? Scrooge began to study, and initially his research did little to temper his pessimism.

Law-school enrollment went up 1.7 percent in the fall of 1981 to a total of 127,531, largely as a result of an increase of 7.0 percent in the number of women—a total of almost 45,000, an increase since 1970 of approximately 600 percent.¹ Despite post-*Baake* hysteria, the number of minority students enrolled in J.D. programs rose to 1,130, with the number of black Americans in law schools increasing to 5,789.²

The future is somewhat less rosy. The number of LSAT takers peaked at 135,397 in 1974, descended to 115,284 in 1979, and during the last two years has increased over 10 percent.³ From a peak in 1983, the number of twenty-two year olds in the United States will be decreasing for the balance of the decade and will decline in most states.⁴ The number of high-school graduates is expected to drop 15 percent by 1985 from a peak in 1978, and most states will share in the downward slide.⁵ There has already been a significant drop in male applications to law schools.⁶

1. First year J.D. enrollment increased only 0.6 percent and total J.D. enrollment increased only 1.6 percent. January 1982 Law School Admissions Bulletin; Millard H. Ruud, That Burgeoning Law School Enrollment Slows, 59 A.B.A. J. 150 (1973).

2. Consultant's Memorandum QS8182-28, James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Schools, May 7, 1982 [hereinafter cited as Consultant's Memorandum].

3. Report of the Joint AALS-ISAC Committee on Demand for Legal Education in the 1980's [July, 1980], Table V [hereinafter cited as Joint Committee Report]; August 1981 Law School Admissions Bulletin; January 1982 Law School Admissions Bulletin. See The National Law Journal, May 31, 1982, at 1, 19.

4. Joint Committee Report, *supra* note 3, Table I.

5. *Id.*, Table II.

6. *Id.* at 10. The Joint Committee Report noted a decrease of 16 percent in male applications between 1975 and 1978.

Numerous other factors obviously can affect law-school enrollment: more applications from the predictable pool of college-age graduates, from an older population, from an increasing number of women.⁷ It is unlikely, however, that such factors will be sufficient to compensate for the precipitous drop in college-age adults.⁸

One unknown factor is the extent to which potential law-school applicants believe that good placement opportunities will not be available upon graduation. Graduate schools have experienced significant declines in enrollment as students perceive that the limited college teaching opportunities for Ph.D.s in many disciplines are not worth the loss of earnings and costs of graduate education. Indeed, it is the decrease in graduate-school enrollments that may explain the ability of the law schools to maintain the size of their applicant pools thus far.

Professor Vaughn Ball has predicted that the number of law-school graduates will grow from approximately 518,000 in 1980 to approximately 610,000 in 1984, and to 750,000 by the end of the decade.⁹ It is possible to quibble with the assumptions upon which his predictions are based, but the accelerated growth of the profession is obvious. The size of the profession increased from 304,938 in 1970¹⁰ to 535,000 in 1980. Despite such phenomenal growth, a recent survey reveals that 95 percent of 1979 law-school graduates from ABA-approved schools found law-related jobs within nine months of graduation.¹¹ No one really knows when, if ever, the job market will dry up.

The Department of Labor each year estimates that about 27,000 legal job openings will await this year's 34,000 law-school graduates, and that during the next few years the annual number of jobs will not increase.¹² Skeptics will correctly point out that the Department of Labor has for over a decade consistently underestimated the number of legal jobs available, but it would be imprudent to forget that prior to 1965 the profession had never absorbed as many as 14,000 lawyers in a single year,¹³ while in the decade of the seventies the average increase exceeded 30,000 a year.

Equally decisive to applicants may be the general impression of joblessness, regardless of the reality. For almost a decade the press has been

7. *Id.* at 6. The Joint Committee Report also notes the possible impact of an increase in the percentage of the college age group who achieve college degrees and the percentage of that group who choose to apply law school, the state of the economy, the perceived societal demand for legal services.

8. *Id.* at 10.

9. *Id.* at 11. Professor Ball suggests that his 1989 estimates may have a margin of error of 10 percent.

10. *Id.* Other estimates place the 1970 total at 335,000. See A. Kenneth Pye, *Meeting the Needs for Legal Education in the South 7* (Atlanta: Southern Regional Educational Board, 1975).

11. Consultant's Memorandum C8081-91, May 15, 1981.

12. *Id.*

13. Pye, *supra* note 10 at 1.

predicting or describing a "lawyer glut," with headlines such as "Many New Lawyers Find Practice is Limited to Looking for Work."¹⁴

Another deterrent to be considered is the failure of financial aid to keep pace with the escalation in costs. Between 1974 and 1980 average tuition in public law schools increased almost 60 percent for resident students and approximately 43 percent for nonresidents.¹⁵ During the same period, private schools raised tuition over 87 percent, resulting in an average differential between private and public tuition costs of approximately \$3,200 for resident students and \$1,950 for nonresidents in 1980.¹⁶

Dependency upon financial aid increased as well.¹⁷ In 1980-81, approximately 21 percent of students in our schools received grants or loans.¹⁸ The value of these grants was in excess of \$25 million in private schools and in excess of \$9 million in public schools. The ABA tells us that grants in 1980-81 constituted 9 percent of tuition and fees and loans constituted an additional 69 percent in private schools; thus, 78 percent of tuition and fees were generated by loans and grants. In public schools, over 17 percent of tuition and fees were provided by grants, and 89 percent of tuition and fees were represented by loans, providing an overall total of 106 percent of tuition and fees represented by loans and grants.¹⁹ These percentages do not include living costs, and some borrowers did not need the money, but the dependence of legal education on credit and largesse is obvious. Unbeknownst to most people, legal education had become a federally subsidized program.

By far the largest source of student financial assistance is guaranteed student loans. The ABA reports that in 1981-82 over \$61 million of GSL funds were used by public school students while the total tuition paid to those schools was slightly less than \$73 million. In private schools, students borrowed over \$230 million in GSL funds while the total tuition paid to those schools was approximately \$337 million. The percentage of federally guaranteed loan money to total tuition was 68.3 percent in the private schools and 119.4 percent in the public schools.²⁰ Loans by students in thirteen schools are not included in these totals.

With the exception of CLEO, there are no federal grant programs for law students. The existing Guaranteed Student Loan Program permits dependent law students from families with incomes under \$30,000, "independent" law students with incomes under \$30,000, and others who

14. N.Y. Times, November 4, 1980, at B1, col. 1.

15. Consultant's Memorandum QS8081-35, June 1, 1981. One survey reports an average increase in law-school tuition of 22.5 percent this year. The National Law Journal, May 31, 1982, at 18.

16. *Id.*

17. Consultant's Memorandum QS8081-16, February 23, 1981.

18. *Id.*

19. *Id.*

20. Consultant's Memorandum QS8182-6A, February 26, 1982.

can show demonstrable need, to borrow an amount not exceeding \$5,000 a year from an approved lender. The law student pays a 5-percent origination fee but pays no interest while in school and 9 percent after graduation. The recent budget act assumes, but does not state, that beginning in 1983 all borrowers will be required to establish need and that interest will be charged at market rates beginning two years after graduation.

Law students in schools that have qualified as PLUS lenders are also eligible for PLUS loans in amounts not exceeding \$5,000 annually. These loans require interest at 12 percent that accrues immediately and must be repaid in ten years.

A few law schools benefit from the National Direct Student Loan Program, which authorizes 4-percent loans under the new legislation, but appropriations have been cut for this program. The overall result of recent legislation is less favorable financing for legal education and, as a result, fewer students able to afford it, at least in the private schools, as inflation produces annual increases in tuition and living costs. The legislation, however, is far more favorable than the draconian proposals seriously considered last winter.

Obviously, the impact of declining application rates will not have the same effect on all institutions. Schools which draw their enrollment from states with a stable or growing population and schools whose applicants come from national pools will be hurt much less than institutions for which these conditions do not pertain.²¹ But the general decline in the numbers of potential applicants may affect most schools, sparing those with predominantly in-state students in states not anticipating major declines, and the national and regional institutions with large, very high-quality admissions pools.²² There should be enough "warm bodies" for almost everyone, but the quality of our student bodies, at least as measured by LSATs and GPAs, may be adversely affected.

As the placement problem grows, we may expect more serious impact from what Robert Runde has described as the "two-tier" market, i.e., the opportunity gap between those who graduated from the "most renowned" schools and those who did not.²³ Heightened perception of the gap inevitably will deter some from attending the only schools prepared to admit them.

Prospects for hiring and retaining faculty are not much brighter. An irony of academic life is that a significant increase in the number of law graduates seeking employment does not necessarily translate itself into a buyer's market for law schools. Law schools have traditionally sought the "best and the brightest," and the economic opportunities for this elite

21. Joint Committee Report at 8.

22. *Id.* at 8-10.

23. Robert Runde, A Two-Tier Market for Lawyers and M.B.A.s, 9 *Money* 80 (May, 1980).

have never been better outside legal education. Top law-school graduates reported salaries in excess of \$40,000.²⁴ Meanwhile, back on the campus the median salary paid young law professors out of school less than five years was \$28,000; the median salary for those with over twenty-five years of experience was \$47,600; and the median of average base salaries for all faculty was less than \$40,000.²⁵

Scrooge's study revealed that not only were the beginning salaries in teaching lower than those paid to the best people entering private practice but that the gap quickly widened. He wondered how many bright young lawyers would want then to teach where less than \$20,000 separates beginners from the most experienced, while salary increases and bonuses in private practice allow an able young lawyer before he is thirty-five to exceed any reasonable expectation of a law professor. Law professors' salaries are not merely uncompetitive, but, like other university salaries, those of the law school have not kept pace with inflation. Far from it—as measured by the consumer price index during the decade of the seventies, salaries suffered a net decrease of 10.6 percent in purchasing power.²⁶ Personal financial sacrifice as a deterrent to recruiting and retaining the best young people is further aggravated by other monetary obstacles: significant loan obligations of many recent graduates and the increasing need to find suitable employment for a spouse who is also a professional—a problem of particular importance in smaller communities.

Even with competitive salaries, at many schools few opportunities to recruit junior staff will exist because of the high percentage of tenured faculty over sixty. Approximately 70 percent of the staff holds tenure at more than sixty law schools.²⁷ Yet high-quality legal education can continue only through the steady attraction and retention of bright young people. "How can this renewal be achieved?" Scrooge pondered.

Firm in his belief that in a law school the library's importance is second only to the quality of students and faculty, Scrooge asked his guide for enlightenment on library affairs. He was soon astonished at the exponential increase in library expenditures. In 1974 Deans Walwer and Swords reported an increase in the average number of volumes in law-school libraries of 108 percent between 1954 and 1970 and an increase in average expenditures for books of over 250 percent, an 80 percent increase in constant dollars.²⁸ These acquisition costs were more than matched by increases in the size and compensation of library personnel. In 1955

24. See the Seventh Annual Salary Survey: Cashing in on Your Law Degree, *Student Lawyer*, November, 1981, at 25-31. *The National Law Journal*, August 10, 1981, at 1, 37-38.

25. Consultant's Memorandum QS8182-13, March 3, 1982; QS8182-17, April 16, 1982.

26. Consultant's Memorandum QS8081-12, March 13, 1981.

27. Consultant's Memorandum QS8081-24, March 23, 1981.

28. Peter de L. Swords and Frank K. Walwer, *The Costs and Resources of Legal Education* 16 (New York: Council on Legal Education for Professional Responsibility, 1974).

library expenditures were divided equally between those for books and those for personnel. By 1970, the latter had become predominant.²⁹

Deans Walwer and Swords noted a "built-in dynamic" that inevitably produces pressures for continuing increases. The last decade has seen that dynamic at work. The costs of books have skyrocketed. In 1979-80 the cost of serials increased almost 16 percent, legal periodicals over 10 percent, and monographs almost 56 percent.³⁰ Maintaining and extending serial collections have combined to escalate both total costs as well as percentage of acquisitions costs attributable to serials, now in excess of 70 percent for many if not most libraries.³¹ The soaring costs of personnel have been arguably exacerbated in part by a host of quantitative library accreditation standards, detailed statistical information shared among librarians, and the presence of a professional librarian on each ABA-AALS inspection team.

Newly crowding the scene are the computerized information-retrieval systems—Lexis, Westlaw, Dialog, Autocite, Orbit, the New York Times Information Bank, as well as computerized bibliographic services—OCLC, RLIN, and others. Libraries can now be ranked in terms of the number of microform readers, printers, and computer terminals.³² The desire to master the information explosion at a time when book costs are escalating has produced a myriad of technological changes, many of which have improved services or efficiency but have constituted "add-ons" to library budgets not reflected in cuts in personnel or acquisition costs for traditional materials.

Many law schools are already participants in the OCLC or RLIN systems; most have terminals for Lexis or Westlaw.³³ On the horizon is LAWNET. The project of the American Association of Law Libraries, LAWNET now makes available in microfiche over 76,000 items appearing in forty-eight law libraries.³⁴ Plans are now being formed to make the data available through computer by a telephone dial-up system. All libraries automating their cataloging systems will be encouraged to contribute their data regularly to an ongoing micro-fiche/on-line bibliographic data base.

The chairman of the AALL Networking Committee, Professor Betty Taylor of the University of Florida, recently described the program for the future:

Future developments will include expanded indices and tables of contents of books; indexing of legal periodicals not covered by the current on-line program, full text of

29. *Id.* at 17.

30. 12 AALL Newsletter 37 (December, 1980).

31. Swords and Walwer, *supra* note 28 at 16.

32. See Consultant's Memorandum QS8081-10, February 23, 1981.

33. *Id.*

34. Report to Council of Section of Legal Education and Admissions to the Bar, LAWNET: A Legal Information Retrieval System for the Legal Profession, by Professor Betty W. Taylor, AALL Networking Committee, May 5, 1981.

law reviews and other legal procedural articles. . . .

When LAWNET is fully operational, the entire legal profession will be interacting constantly with the system through individual terminals for current decisions of all courts at the instant of releasing the final copy from the courts' word processors; the legislative process from bills to laws, interpretations, etc., published legal articles in law reviews, legal periodicals, newspapers. . . .

The entire contents of libraries will be retrievable by computers, as well as much of the recording—such as land records—now handled manually. Professor Taylor estimates that the full text of court and agency decisions will compose 50 percent of annual input base, the texts of statutes another 25 percent, and bibliographic materials the remaining quarter.³⁵

Scrooge paused for a moment. If library costs are skyrocketing, where are we obtaining the money to maintain our collection? He tried but failed to remember any discussion of the subject in faculty meetings. He wondered whether teachers' salaries and financial aid were being sacrificed, whether his school was falling behind competitors, or whether new resources existed of which he was unaware. For the first time in many years he asked himself a question that had troubled him as a young professor—"How big and what kind of a library do we need to meet the needs of our students and faculty?"

The concept of LAWNET seemed part of the world of Buck Rogers. "These computers and microfiche look great, but I like books; you can't curl up in bed with a computer," he thought. "I think I know how a blacksmith must have felt when he learned of Henry Ford's assembly line. How will I function if we stop buying books? How can we afford to buy books and also be up to date in these new information-retrieval systems?"

Scrooge consoled himself that, even if he didn't understand libraries, he knew the curriculum. For several years he had served on the curriculum committee. While their meetings usually involved horse trading an additional hour for property or civil procedure in exchange for a seminar in some esoteric and unpopular subject, he had diligently tried to keep pace with the general literature on curricula. He had read the Jackson and Gee studies³⁶ documenting his own suspicions that the required segments of law-school curricula were much alike, that the number of required courses has been modestly reduced, that most schools tend to follow the lead of the "band of 15"—the so-called prestigious schools—and that most students choose electives they think will help them on bar examinations or in practice.

35. *Id.*

36. Donald W. Jackson and E. Gordon Gee, *Following the Leader, The Unexamined Consensus in Law School Curricula* (New York: Council on Legal Education for Professional Responsibility, 1975); Donald W. Jackson and E. Gordon Gee, *Bread and Butter: Electives in American Legal Education* (New York: Council on Legal Education for Professional Responsibility, 1975).

He had read the Carrington Report,³⁷ had been intrigued by its proposals, but, like most of his colleagues, saw little justification for altering the lifestyle of faculty implicit in any major change, particularly the proposal to compress the curriculum into two years. He had been virtually drowned in Bill Pincus's newsletters extolling the virtues of clinical education and had voted with skepticism to hire a clinician, primarily on the ground that it could do little harm—the kids wanted to do it, and everyone else seemed to be doing it.

More recently, he had been impressed with the Cramton Report's argument that law schools should provide instruction in those fundamental skills critical to lawyer competence, including the ability to write effectively, communicate orally, gather facts, interview, counsel, and negotiate.³⁸ He remembered having quaked then at the thought of teaching counseling, interviewing, or negotiating and could think of no colleague with either the requisite expertise or the desire to acquire it.

Disconcertingly, his school bulletin revealed that with little exception (the fledgling clinical program, a few seminars, some of which were taught by the problem method, a few more sections of trial practice, and a few exercises with LEXIS) the curriculum differed little from the course of study when he was a student. Not to be found in the law school were extensive use of audio-visual materials, computer-assisted instruction, the use of data processing to store and retrieve information, and regular participation of university professionals in other disciplines.

"Why so little progress?" he asked, and he comforted himself with Robert Stevens's observation that while a better faculty-student ratio would not ensure reform, the present ratio constituted an immovable block across the road.³⁹ "There are only so many possibilities open with a student-faculty ratio of nearly 30 to 1; with an average annual expenditure per student of approximately \$4,000, law schools cannot be expected to provide the rich curriculum or the sophisticated methodologies of other university divisions with the luxury of two to seven times the budget for each student,"⁴⁰ he rationalized.

"Perhaps the answer lies in cutting costs," Scrooge conjectured. But inflation, even if it subsides, is unlikely to fall below 8 percent, or so his

37. Report to the Association of American Law Schools, *Training for the Public Professions of the Law: 1971* (Ann Arbor, Mich.: Association of American Law Schools, 1971), named for its chairman, Dean Paul D. Carrington of Duke University School of Law.

38. Report and Recommendation of the Task Force on Lawyer Competence: *The Role of the Law Schools* (Chicago: American Bar Association, 1979), named for its chairman, Dean Roger C. Cramton of Cornell Law School [hereinafter cited as Cramton Report].

39. Robert Stevens, *Legal Education: Historical Perspectives*, in *Clinical Education for the Law Student*, 43, 53 (New York: Council on Legal Education for Professional Responsibility, 1973), quoted in Cramton Report, *supra* note 38, at 22.

40. See Consultant's Memoranda QS8081-14, February 23, 1981 (Student/Faculty Ratios); QS8081-29, April 13, 1981 (Law School Expenditures per F.T.E.). The Cramton Report estimates a median instructional cost of about \$3,300 per student.

economist friends told him. Financial-aid demands grow with increases in living expenses and tuition. And if present circumstances continue, the library is likely to require more, not less, support.

"If we can't cut costs, maybe we can find new resources," Scrooge offered dimly, feeling increasingly unsettled. "There are always the alumni; maybe they'll do more when they perceive the need."

After all, the Cramton Report urged lawyers to make financial contributions and law firms to do so as well,⁴¹ but so had Ehrlich and Packer a decade ago⁴² and Bayless Manning before that.⁴³ Unfortunately neither lawyers nor law firms, with the exception of alumni of a handful of schools, mostly private, have proved to be very generous. And the prospects of long-term support in significant amounts from corporations, foundations, and nonlawyers appear bleaker still. Government funding for clinical programs and CLEO barely survived the appropriations process this year, and federal loan programs were narrowed. Proposals for a National Institute of Justice evanesced during the Carter Administration; since then the Reagan Administration has made significant cuts in social-science research support, including law.

Little additional funding can be expected from university administrators. Harassed by the reality of plummeting graduate-school enrollment and the threat of decline in undergraduate applications, their predatory instincts tell them to loot the law school, not to provide additional support for them.

Tuition can be increased, but whether it can be done at rates much greater than inflation is at least open to question. There may come a point at which many students cannot, will not, or should not borrow more money, even in exchange for an excellent education.

Increased state appropriations may offer some relief for public institutions. State tax dollars now pay for 65–80 percent of educational costs in most public law schools.⁴⁴ The time may come, however, when legislators, many of whom are lawyers, will question the wisdom of providing more funds to educate more lawyers, when the need is less than apparent and the threat of price competition by young lawyers, exacerbated by advertising and sophisticated forms of solicitation, is real. Some obviously misguided souls may even conclude that public money is better spent in the education of scientists and engineers whose contributions to productivity and increases in the standard of living can be more easily demonstrated—and point to Japan and West Germany as examples.

41. Cramton Report, *supra* note 38, at 6.

42. Herbert L. Packer and Thomas Ehrlich, *New Directions in Legal Education* (New York: McGraw-Hill, 1972).

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

44. Consultant's Memorandum QS8081-63, July 27, 1981.

Scrooge was thoroughly despondent. Was there no hope in the vision of the ghost of the future? Could nothing alter the path he and his school seemed to be taking? He rebelled at the prospects of despair. Legal education has faced difficult times before and has come through stronger for the experience.

The first step, he recognized, was a matter of the spirit—morale needed to be improved, a certain *élan* developed. He could start by viewing the future, not as a problem, but as a challenge and an opportunity. The next step was to proceed in a lawyer-like manner to formulate alternatives and evaluate them. Once again he was struck with how rarely faculty apply their professional talents to the problems of legal education.

His reading thus far made clear that the literature is rich in ideas. While instant answers were not likely to appear, it was unnecessary for him to begin inventing wheels. Inspiration abounded in thoughtful reports on a wide range of issues. Some he had already read; many others awaited study. And undoubtedly profitable approaches could be gleaned from unpublished committee reports of other law schools, as well as adapted from the diverse solutions of business and medical schools.

Scrooge recognized that fundamental to the success of a law school is faculty consensus on definition and function, implemented by a rational program to achieve these ends. He had engaged in “self-evaluations” before and once had even drafted a mission statement. Usually, the statement of objectives was vague, all-embracing, and merely an echo of those of the more prestigious institutions whose number his school would hope to join. Never had anyone seriously considered the resources likely to be available in determining the purposes of the school for a self-evaluation report or law-school bulletin.

A different approach was now required. Lacking the resources of Harvard, the faculty of Harvard, the student body of Harvard, or the library of Harvard, perhaps his school could face the fact that it might not have the mission of Harvard. Perhaps, in terms of curriculum, library, and other components of the educational program, another mission might be clearly inferred. Most thoughtful observers have long recognized that schools have different resource bases and different constituencies, that they serve different needs. There was little need for belt-tightening during the affluence of the sixties but much greater reason now. Hard decisions are upon us. Foresight and planning are mandatory. Depending upon each school's human and financial resources, its constituencies, and its parent university, varying paths of salvation will present themselves. But some choices must be made.

Scrooge decided to prepare a memorandum of his own perceptions to share with his colleagues. Perhaps his initiative might start the ball rolling. He took pen in hand:

“Some directions seem obvious. Our school should study the probable

future of its applicant pool.⁴⁵ It should develop a recruitment program for those now unlikely to become applicants.⁴⁶ It should attempt to improve its placement services and make special provision for job opportunities other than in traditional law practice.⁴⁷ It should educate students, faculty, legislators, and alumni on the potential financial problems on the horizon.⁴⁸

He paused for a moment. How should he deal with the major problem posed by the reduction in highly qualified applicants? He was tempted to finesse by suggesting that the school begin considering "a full range of the quality and skills important to professional competence, giving greater weight to such factors as 'writing ability, ability in oral communication, work habits, interpersonal skills, dependability, and conscientiousness' " instead of admitting students almost exclusively on the basis of grade-point average and standardized test scores.⁴⁹

With luck, he thought, no one will ask how the school can decide which students have good work habits despite low grades or which are dependable and conscientious, at least so long as the admissions committee determines that significant numbers of children of alumni, large donors, state legislators, and minorities possess these highly desirable if unquantifiable traits.

Indeed, if the NEA, Mr. Nader, and their associates have their way, the utility of standardized testing may be destroyed under the rubric of "Truth in Testing," opening the door further towards admission by lot, thereby avoiding the painful necessity of defining, to say nothing of identifying, that nebulous quality of "potential" among the applicants for entrance.

Reluctantly, he decided that his school should face the problem honestly. While agreeing in principle with the notion that schools "should not yield to the pressure to admit students who do not have the potential to become competent lawyers,"⁵⁰ he wondered what such a declaration would mean in practice. He resumed his new habit of talking to himself:

"Is the issue who we thought had the potential in the 1960s or who we thought had the potential in the 1970s? Attrition in law school for all causes was only 10.2 percent in the first year and only 5.5 percent overall last year, with only one-third of these students withdrawing because of academic difficulty.⁵¹ It seems quite likely that many applicants who could have performed successfully in law school were refused admission because

45. Joint Committee Report, *supra* note 3, at 1.

46. *Id.* at 3.

47. *Id.* at 2.

48. *Id.* at 3.

49. Cramton Report, *supra* note 38, at 3.

50. *Id.*

51. Consultant's Memorandum QS8081-25, April 13, 1981.

they were less likely to succeed than others who were admitted, not because they were poor risks by the standards of the sixties.

"Really, the choice is whether to increase the risk of attrition by giving a chance to more doubtful cases—as most schools did historically—or judging 'potential' in terms of our standards of the seventies."

Scrooge recognized that some thoughtful observers would prefer simply to maintain quality and accept reduction in size. Both the Cramton Report and the Joint AALS-LSAC Committee urged that schools resist reductions in teaching staff and use declining enrollment to improve student-faculty ratios in order to permit closer work with students and to utilize small classes as "opportunities for individualized instruction in fundamental lawyer skills."⁵²

That private schools could afford such laudable objectives; that state legislatures would tolerate them, to Scrooge seemed questionable. If in the era of affluence now past, faculty-student ratios could not be acceptably lowered or skills training in small units adopted, how could such goals be accomplished in the decade of the eighties?

In any case, Scrooge concluded, the first priority must be the maintenance of a high-quality, albeit possibly smaller, faculty. Salaries must be adequate. In addition, faculty must be prepared at least to consider changes. Once again he began to record the perceptions gained from his studies:

"Most faculty teach fewer courses now than they did two decades ago. It is not self-evident that their teaching is significantly better. Nor is it clear that the quality, as distinguished from the quantity, of published scholarship is much better. The number of courses, many of which have small enrollments, has increased significantly. Many undersubscribed courses and seminars need not be offered annually to be available to students freely choosing electives over a two-year period. Some can be presented as well, or better, by practicing lawyers and judges.⁵³ In many areas, a visitor from a nearby sister institution could offer the course every other year and would be happy to do so for modest remuneration. Such approaches might permit the permanent faculty to concentrate on its core curriculum and over time reduce its size and increase average salaries without significant loss to the quality of teaching or scholarship. It might also inject vitality into those faculties which are destined to be more static than is desirable in a period when few new members are likely to be appointed.⁵⁴

52. Joint Committee Report, *supra* note 3, at 2; Cramton Report, *supra* note 38, at 4.

53. Cramton Report, *supra* note 38, at 4. The overwhelming majority of law professors come from a small group of elite schools. Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1981 A.B.F. Research J. 501 (1980).

54. Joint Committee Report, *supra* note 3, at 13.

“Additional savings might be accomplished if faculty once again undertook some of the administrative duties that they have delegated to nonfaculty administrators during the last fifteen years.”

Scrooge turned his attention to the library and began to write:

“The size and configuration of the library must be more closely related to the teaching and research needs of our school. Masses of statistics and a host of quantifiable standards have tended to obscure the reality that library needs differ widely among schools. The adequacy of a law-school library should be judged primarily by its success in meeting the needs of students and faculty. Unpleasant questions must be asked concerning the number of law journals and services required for the instructional and research program and whether foreign law materials are as important as duplicate copies for the Code of our state. Interlibrary-loan or travel support for outside research may be necessary to fulfill special faculty needs if the library wedge of the law-school pie is to maintain its size.

“Such issues have been the province of our highly qualified librarians. We should now apply Sherman’s dictum concerning war to the library scene.”

“Can you enlighten me about the curriculum?” Scrooge asked his ghostly companion. In honesty, he recognized that his school’s course of study consisted of (1) courses the faculty thought essential; (2) courses students wanted to take that the faculty found unobjectionable; and (3) courses faculty wanted to teach regardless of student interest. The sixties and seventies had added significantly to category (2). The advent of seminars markedly increased the number in category (3). The Cramton Report, Scrooge was forced to admit, was clearly correct in its conclusion that law schools should seek to achieve greater coherence in their curriculum even at the expense of loss of some teacher autonomy.⁵⁵ Once again he plied his pen:

“The conditions of the future require that the faculty determine the methodologies, skills, and information that need to be taught and eliminate some of the offerings that do little to further such objectives. The time may be ripe to structure a curriculum so that students are presented with problems of successively broader scope and challenge and to utilize skills and knowledge acquired earlier.⁵⁶ Perhaps impossible to duplicate is the relatively orderly progression in medical education from the basic sciences to general medicine to clinical training to specialty training, but it stands in stark contrast to the use of the case method and Socratic dialog in the third year of many law schools.

“Our school should examine the value of broadening its curriculum to include at least some courses—such as budgeting, finances, and manage-

55. Cramton Report, *supra* note 38, at 4.

56. *Id.*

ment techniques—for the student who is destined for business or government,⁵⁷ or make arrangements that will permit law students to take such courses for credit towards the J.D. degree in other divisions of the university.

“Some consideration should be given to the enrollment of students from other parts of the university, developing special courses and programs for them, and reexamining the role of law-faculty members in continuing legal education.⁵⁸ We should seriously consider the introduction of structured accelerated programs for students who cannot afford a three-year residential course of study.⁵⁹

“Our objective should be the development of a program both worthwhile and practicable with much less concern for holding the mirror up to other schools. They are likely to be engaged in similar exercises.”

Scrooge knew his colleagues. He knew their reluctance to abandon hope for new but unidentified resources to answer their concerns. With a nod of approval from his far-seeing companion, he squelched such false hopes in a final paragraph:

“Obviously, efforts must be renewed to increase external funding, with the objective that such sources provide a margin for excellence. We must recognize, however, that the real challenge must be faced by the faculty itself as it reexamines its priorities, reallocates its existing resources, and recognizes the limits upon our school’s capabilities.”

Scrooge sat back and considered the afternoon’s work.

He recognized that a successful program might produce a school with a smaller faculty, students with lower LSATs, and a library of narrower breadth. But he appreciated as well that such a school, if it maximized available resources, might still be able to educate lawyers equally capable as the crop now being produced.

Clearly, this was a challenge but one well worth undertaking. After all, the bottom line is not the average LSAT, the number of books in the library, or the number of electives listed in the bulletin. The quality of a school is measured in the end by the quality of the lawyering provided to the public by its graduates and the contributions to scholarship made by its faculty. Under the aegis of a dedicated faculty, the essential steps are the formulation of realistic objectives, the development of a plan to implement them, and the reallocation of necessary resources for the plan to function.

Scrooge decided it was well worth the effort to try—and wondered whether he could press one of his spirits into service as a ghostwriter.

57. Joint Committee Report, *supra* note 3, at 2.

58. *Id.*

59. See David F. Cavers, A Proposal: Legal Education in Two Calendar Years, 49 A.B.A. J. 475 (1963).