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Recent Changes in Legal Education

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Ithaca

The changes in the membership, average age, numbers and minority group representation in the legal profession are creating new problems for lawyers, courts and law schools. The author, a law professor and formerly Dean of Cornell Law School, is highly qualified to advise us on this subject. The Journal is proud that he also is a member of its Board of Editors.

Changes in legal education and the practice of law. Murray Schwartz has argued, have not been related to one another but have moved on separate paths.[1] The organization of the legal profession, for example, has dramatically changed in the twentieth century from "the 'custom' practice of the individual artisan to membership in increasingly large firms and single-client (government or corporate counsel) aggregates."[2] Further changes are afoot:

> The advent of group and prepaid legal services for middle-income Americans, government-subsidized legal services for the poor, a growing public interest bar, the use of paralegals in the performance of tasks once strictly reserved to lawyers, and the abolition of the anticompetitive restraints on advertisement of professional services have all laid the foundation for a major restructuring of the profession.[3]

Although the law schools have not neglected these developments in their teaching and scholarship, Schwartz concludes that legal education appears to have been neither influential in bringing them about nor radically altered by them:

> By contrast [to the sweeping changes in the structure of the legal profession and the nature of legal work]. only two major changes in the field of legal education can be readily identified—clinical legal education and a change in the demography of the law student population—both of which bear little relation to changes in the practice of law.[4]

I believe that changes in legal education have been more numerous and substantial than Schwartz recognizes and, whether or not they have been caused by changes in law practice, will have profound effects on it.

A. Changes in the Law School Population

In discussing the demographic changes in legal education, Schwartz mentions the growth in the numbers of law students and the inclusion of women, blacks, and other minority groups in the flow of law graduates. In the twelve-year period from 1968 to 1979 the number of students enrolled in ABA-approved law schools doubled (62,779 to 122,860), as did the number of first professional degrees granted (16,077 to 34,590) and the number of first admissions to the bar (17,764 to 39,086).[5]

Many have expressed fears about whether the profession will be able to absorb this large number of law graduates.[6] The explosive growth in the demand for lawyers' services, especially in the national market for the services of the law graduates with the best academic pedigrees, has resulted in a

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[1] Schwartz, *How Can Legal Education Respond to Changes in the Legal Profession?*, 53 N.Y.U.L. Rev. 440 (1978).

[2] *Id.* at 441.

[3] *Id.* at 440.

[4] *Id.* at 441.

[5] A Review of Legal Education in the United States—Fall 1979 (1980) ABA. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR [hereinafter cited as 1979 Review]. The figures for the decade 1970 to 1979 are on pp. 63–64. Earlier editions of the same publication provide the figures for 1968 and 1969. The second figure for first admissions to the bar is for 1978 rather than 1979.

[6] *See, e.g.*, York & Hale, *Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook*, 26 J. LEGAL EDUC. 1 (1973); *Job Prospects for Young Lawyers Dim as Field Grows Over-Crowded*, N.Y. Times, May 17, 1977. § 1 at 1. col. 5.

brisk upward movement in beginning salaries for some positions. Other more local employment markets for lawyers have entered a period of relative depression.

The high number of law graduates in recent years has affected the psychology of both law students and practicing lawyers. The scramble for employment has significantly influenced the hidden curriculum of law schools—that amalgam of attitudes, values, activities, and experiences that may not be part of the formal curriculum but is a significant part of the total educational experience. Law students, in their preoccupation with securing employment, select courses that they believe to be preferred by employers, participate in law practice during law school, and spend an enormous amount of time and psychic energy on job hunting.

The massive flow of graduates has also generated concerns in many segments of the bar about "overcrowding." These concerns are bound to reinforce, if not initiate, proposals to stem the tide of new entrants. Other changes in the structure of the profession reinforce practitioners' feelings of uneasiness and dislocation: group legal services, publicly funded legal services for the poor, the attrition of solo practice, and the relaxation of restraints on advertising. No one knows where all these changes may lead, but fear of the unknown fosters a protective stance. Emphasis on the trade union or guild aspect of professionalism is a natural reaction to a succession of changes in the structure of the profession and the ways in which lawyers carry on their work.

Even more significant than the growth in the total number of law graduates are the changes in the composition of the law student population. Women, who formerly were a mere trickle in the continuing flow of graduates, now constitute nearly one-third of law students and will gradually gain a similar representation in the profession.[7] Blacks and other minority groups, largely excluded from the profession before the 1960s, have been represented in substantial and generally growing numbers since then. In the 1979–80 school year 4.3% of all law students were black; another 3.9% were representatives of other minority groups (Hispanic Americans, native Americans. Asian Americans, etc.).[8] These demographic changes will alter the character of the legal profession in ways that are hard to predict.

Qualitative changes in the law student population, unmentioned by Schwartz, will have significant effects on the average competency of the legal profession. During the last fifteen years the intellectual qualifications of law students have increased substantially; law students today at all law schools are brighter and have better college records than their predecessors of earlier decades."[9] There are not only more of them but on the average they are much better qualified.

The Evans study of 1977 compares the qualifications of law students in the early 1960s with those of students in 1977, and concludes that LSAT scores at all law schools have risen dramatically: "[A]t least in terms of the average LSAT scores of their entering classes, every law school today is more selective than 80% . . . were in 1961, and . . . 90 schools today are at least as selective as [the eighth most selective] school in 1961."[10] Although comparable data are harder to come by, it appears that the undergraduate academic records of students admitted to law school have similarly improved. A sample of twenty-three law schools included in the Evans study showed that the average undergraduate grade point average increased from 2.76 in 1965 to 3.04 in 1970 to 3.35 in 1975, a change that probably exceeds the grade inflation during the same period.[11]

The significance of these changes for lawyer competency and law practice is that the profession will be composed of individuals who are abler than their predecessors and who have demonstrated the capacity and willingness to do excellent academic work. On average they will have better analytical ability and greater verbal skill and will be somewhat more motivated, competitive and achievement-oriented than their predecessors. One suspects that these changes will produce a more qualified profession.

It is possible, as some observers have suggested, that there is a negative side to populating the profession with individuals who excel in analytical and verbal combat. These new lawyers may be less interested in people, less inclined toward empathy and sensitivity in interpersonal relations, more inclined to talk than listen, and unprepared to devote their considerable intellectual talents to the mundane realities of routine service to the middle class and the poor. As intellectual capability has expanded, experience of people and of life may have decreased. These intuitive propositions, however, are not supported by empirical data such as those establishing the increase in intellectual capability and undergraduate performance.

[7] In 1979 there were 38.627 women in a total law school enrollment of 122,860. 1979 REVIEW *supra* note 5, at 64. *See also* White. *Legal Education: A Time for Change*. 62 A.B.A.J. 355, 356–58 (1976).

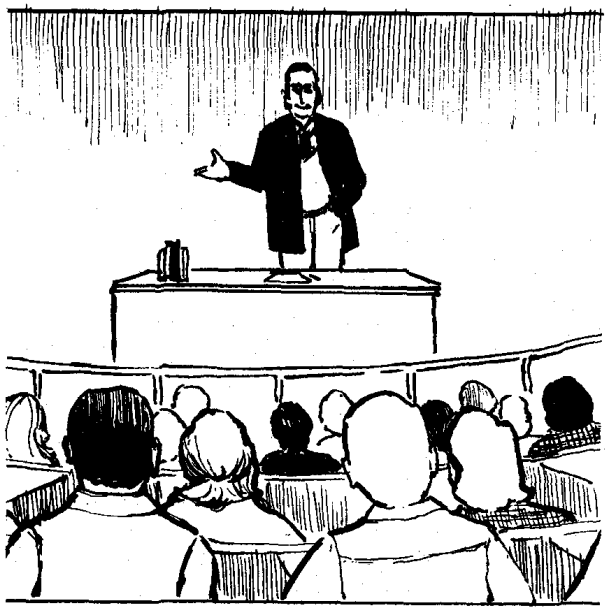
[8] There were 5,257 blacks and 4,751 other minorities in the 1979–1980 total enrollment of 122,860. 1979 REVIEW, *supra* note 5, at 60–61.

[9] Evans, *Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976*, in 3 LAW SCHOOL ADMISSION COUNCIL, REPORTS OF LSAC SPONSORED RESEARCH 551, 634 (1977).

[10] *Id.* at 572.

[11] *Id.* at 573–74.

These changes reflect the greater selectivity that increased competition for admission to law school has permitted. In 1963, for example, the ratio of LSAT test administrations to the number of places in entering classes was approximately 1.5 to 1 (*i.e.* for every three college students interested in law school there were two places available). *Id.* at 570. In recent years the ratio has been about 3.5 test administrations for each first-year seat. *Id.* at 570–71.



B. The New Apprenticeship

Another major change with large implications for lawyer competency is the growing numbers of law students participating in law practice while in law school. Unlike the revolution that has introduced more skills training and clinical experience into the law curriculum,[12] the extracurricular growth of apprenticeship experiences has been largely unplanned.

Virtually all legal employers have inaugurated or expanded summer clerkship programs for upperclass (second and third year) law students, and increasingly these opportunities are extended to students who have completed only one year of law school. Although accurate data are not available, a high and increasing proportion of law students have at least one two-month apprenticeship experience while in law school.

Legal employment during the academic year is also on the rise. Although it has been customary for many students in local law schools to work part-time while in law school, this phenomenon has now spread to all schools. The Pipkin study of how law students spend their time suggests that about one half of all upperclass law students are engaged in part-time work during the academic year, much to the alarm of some teachers, who complain of a decline in class attendance and preparation and talk openly of "the part-time full-time student."[13] Although ABA accreditation standards prior to 1980 limited a full-time law student's outside work to fifteen hours per week.[14] it is widely believed that many upperclass students clock fifteen to thirty hours per week on a fairly regular basis. They do so partly for economic reasons, partly for job placement purposes—in many cities the best avenue to a permanent position is a clerkship during law school—and partly because they find apprenticeship experience helpful and interesting.

My purpose is not to praise or condemn the apprenticeship experiences that students have provided for themselves during their law school years, but to point to those experiences as a new development that responds to the call for expanded apprenticeship experiences and more skills training. Law students today have far more opportunities,

[12] For a useful survey of the development of clinical legal education, citing many of the leading articles on the subject, see Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*. 1977 B.Y.U.L. REV. 695, 881–92. *See also* Barnhizer, *Clinical Education at the Crossroads. The Need for Direction*, 1977 B.Y.U.L. REV. 1025. With respect to skills training, see Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140 (1971).

[13] *See* Brickman, *Is Law School a Full Time Enterprise?: Part Time Students and Part Time Teachers*, 10 COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY NEWSLETTERS, May 1978, at 1 (reporting a panel presentation by Cramton, Pipkink Redlich, and Stevens). Professor Pipkin's empirical study, sponsored by the American Bar Foundation, is not yet available in published form, but the major findings are included in Brickman, *supra*.

[14] In August 1980 the Council of the ABA Section on Legal Education and Admissions to the Bar relaxed this longstanding limit to 20 hours per week by reinterpreting Standard 305(a)(iii), which defines a "full-time student" as "a student who devotes substantially all working hours to the study of law." ABA STANDARDS AND RULES OF PROCEDURE, APPROVAL OF LAW SCHOOLS (as amended 1979). Query whether this modest concession to reality is consistent with the text of the standard.

both within the classroom and without, to learn about and to experience law practice. One suspects they are much more ready than their predecessors of some years ago to assume some of the common tasks of the profession, such as interviewing clients, investigating facts, and devising legal strategies.

The question for legal educators is whether to fight the apprenticeship practices that compete for a student's time during the year or to incorporate them into the formal educational program. The old ABA standard, limiting hours of work during the term to fifteen per week, was violated by substantial numbers of law students. Many law schools seek to restrict outside work by scheduling classes throughout the day and week. Many faculty members reinforce this structural device by requiring class attendance, and some schools make regular class attendance an institutional requirement. Elsewhere a more relaxed attitude prevails, and school officials rely on the capacity of adult students to make good judgments about the use of their time in preparation for a career. Only a few law schools, notably Northeastern,[15] have tried the other alternative, systematically incorporating the apprenticeship experience into the formal educational program. Courses and seminars that utilize the practice experiences students have while in law school may be desirable, since a critical and informed observer in a legal setting will learn a great deal more than an uncritical and uninformed one. Whether the on-the-job experiences of law students can be effectively utilized in the educational program without breaching attorney-client confidentiality or causing other difficulties remains an unresolved question.

The traditional method of transition from law student to lawyer is the period of informal apprenticeship provided to new recruits by many law firms and legal employers. In the past it was assumed that supervised self-instruction on the job was the least expensive form of practical legal training, and many of the best law firms asserted that the quality of the firm's product was in part dependent on the structured supervision provided to associates in the initial years of practice. In recent years, however, many practicing lawyers are taking a contrary view: The beginning lawyer, if he is to be paid $20,000 to $40,000 in the first year of employment, must have more practice skills, since he must begin to earn his own keep soon after being hired. Law firms now complain about the enormous cost in partner and associate time attributable to recruiting, training, and supervising new attorneys. They want to shift as much of this cost as possible to the law schools or to other organizations, such as new institutes that would provide transition training to recent graduates, just as bar review courses prepare them for the bar examinations. The establishment of specialized training programs, such as the tax, labor, and other LL.M. programs that have been associated with some metropolitan law schools for many years, could satisfy part of this demand. The creation of trial advocacy institutes of the kind urged by Chief Justice Burger would also add to the growing diversity of preparatory alternatives.[16]

[15] The programs at Northeastern and Antioch are discussed in Gee & Jackson, *supra* note 12, at 857–59, 862–66.

C. Effect of Law School on Career Choices

It is frequently stated that law schools inculcate in students a view of the relative value of different kinds of professional work by emphasizing the intellectual appeal of corporate law specialties such as taxation and securities regulations.[17] And many students, especially at the elite schools where they are surrounded by classmates who are being interviewed by or talking about job possibilities with major corporate law firms, claim that law schools are totally oriented toward the service of big business.[18]

Law schools, however, are not single-minded in the values they serve, and these faddish criticisms are much overdrawn. During the last generation the trend in law schools has been toward wider recognition of the diversity of the legal profession and its responsibility to ensure legal services for the poor. The law school world entertains an increasingly skeptical attitude toward the corporate elite of the established bar. Certainly there is more interest in fundamental issues of professional responsibility today than there was in earlier years.

A number of studies of changes in student attitudes toward various kinds of careers have sought to illuminate the effect of law study on career choice, but with mixed results.[19] According to

[16] Burger, *Annual Report on the State of the Judiciary*, 49 PA. B.A.Q. 212. 215–18 (1978) (speech by Chief Justice Burger at the ABA Midyear Meeting, Feb. 12, 1978, New Orleans, La.).

[17] *See* Nader, *Law Schools and Law Firms*, 54 MINN. L. REV. 493 (1970) (reprinted from THE NEW REPUBLIC, Oct. 11, 1969, at 20).

[18] *Cf.* OFFICE OF THE ASSISTANT DEAN OF STUDENT AFFAIRS OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL. LAW SCHOOL HANDBOOK 57 (1980) (student comment: "If the school turns out many corporate lawyers, it is because the students *choose* to enter that field, not because they are forced or "brainwashed" into it").

[19] The literature on this subject is surveyed in Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 235–82 (1974). For more recent research, see Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 1979 AM. B. FOUNDATION RESEARCH J. 791; Rathjen. *The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students*, 44 TENN. L. REV. 85 (1976); Schwartz, *Law; Lawyers and Law School: Perspectives from the First-Year Class*, 30 J. LEGAL EDUC. 437 (1980); Simon, Koziol & Joslyn, *Have There Been Significant Changes in the Career Aspirations and Occupational Choices of Law School Graduates in the 1960's?*, *8* LAW & SOCY. REV. 95 (1973).

these studies, students say that they come to law school in order to be independent, that they want to work in small offices rather than large, that they prefer public interest and criminal law employment, and the like. Although students change their attitudes somewhat during law school, it is not the change that is surprising, but the contradiction between attitudes and behavior. Why do students who say they prefer employment with small firms accept employment with large ones? Why do students who say they prefer serving people in areas like criminal law choose business-oriented practice? The answer appears to lie in market forces—students must choose from the available jobs. One of the most recent studies, that of Erlangen and Klegon, concludes that only modest attitudinal changes occur during law school on these matters and that market forces in the employment of law graduates and in the demand for legal services are the major conditioners of practice preferences.[20]

The attitudes and values of law students tend to mirror those of the profession at large. Since law students choose the profession in part because of the rewards in status and coin of the realm that it offers, they can be expected to respond to the profession's own subtle notions of its internal pecking order. Laumann and Heinz, in studies, based on personal interviews with a sample of Chicago lawyers in 1975, confirmed the prevalent view that legal specialities serving big business have the most prestige among lawyers and that more routine legal specialities serving individuals—general family practice, divorce, personal injury, consumer, and criminal law—are at the bottom of the prestige heap.[21] The higher-ranked specialities are thought to have more intellectual content and to involve a higher level of ethical conduct than some of the specialities that have a low prestige ranking, such as plaintiffs' personal injury work, divorce, and criminal defense. The prestige ranking is correlated to some degree with income levels at the very top and bottom of the ladder, but not significantly otherwise.

It is not surprising that the major influence on the career choices of law students run from the profession to the schools rather than in the reverse direction. But there is an important lesson in this: Law students pay close attention to the factors considered significant by important legal employers in hiring law graduates, and student response to these signals can have a powerful influence on law schools. Thus the skepticism of some large corporate law firms about the value of clinical legal education has influenced students in some schools not to enroll in such courses. One of the ironies of the moment is that the same judges and lawyers who call for law schools to provide more training in legal skills continue to select their law clerks or new associates on the basis of traditional criteria that reinforce the dominant curriculum: the class standing of the student, law review experience, the repute of the student's law school, and the scholarly reputation of the faculty members who provide references. These may be the appropriate criteria. If, however, these critics of legal education are sincere in their view that a legal education should include more than just classroom and writing experience, they would exercise a powerful influence on legal education if, in interviewing and selecting law graduates for employment, they considered only students who had taken clinical or other skill courses. Achievement-oriented students would respond quickly to such signals from prestigious sources, and they would make demands for the development or expansion of skills courses that law faculties would soon heed.

[20] Erlanger & Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 LAW & SOCY. REV. 11 (1978); Erlanger, *Young Lawyers and Work in the Public Interest*. 1978 AM. B. FOUNDATION RESEARCH J. 83.

[21] Laumann & Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 AM. B. FOUNDATION RESEARCH J. 155. See *also* Laumann & Heinz, *The Organization of Lawyers' Work: Size, Intensity, and Co-Practice of the Fields of Law*, 1979 AM. B. FOUNDATION RESEARCH J. 217 (concluding that lawyers specialize more in a particular clientele than in a distinct area of law).