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Studies of Legal Education: A Review of Recent Reports

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Early in 1972, the Carnegie Commission on Higher Education published its report on legal education.¹ It is the most prominent study of legal education in the last decade, and typical of discourse in and about law schools—urbane, speculative, unempirical, conceptual, rarely student-centered. The authors of the Carnegie report were articulate law teachers. They wrote with their feet up and their pipes lit, without attention to facts which did not come from their considerable experience. The value of such reports is the thoughtfulness of the people who write them, and their predictive accuracy is due to the fact that people who are powerful in legal education deal in self-fulfilling prophecy. Reports on legal education are therefore characteristically thin on new information, well informed about yesterday, incisive on tomorrow, and weak about today.

A less prominent, less urbane movement in the organized Bar is particularly noticeable in and around the American Bar Association, in which lawyers and judges report on legal education. The American Bar Association Section on Legal Education, a diffuse, voluntary

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1. The law-school report was written by the late Professor Herbert L. Packer and Dean Thomas Ehrlich, both of the Stanford University Law School. It incorporated as an appendix a global study on law-school curricula which had been prepared a year earlier by the Association of American Law Schools; the curriculum effort was the work of a committee of law teachers headed by Professor Paul D. Carrington of the University of Michigan Law School.

group of professors, lawyers, judges, and officials of government, for example, controls law-school accreditation. The Section's governing Council chooses committee members for Section activities, including the Committee on Law School Accreditation. National movements and concerns about legal education often find their way into the discussions, resolutions, and activities of the Section on Legal Education, and the Section usually defends the interests of law professors in the broader debates which go on in the American Bar Association and in the national legal profession. Recent examples include a 1975 resolution brought in the American Bar Association's House of Delegates by lawyers from Idaho, to remove from accreditation rules the requirement that law schools provide tenure to professors. Another continuing argument arranges itself around rules of state supreme courts which impose curricula on law schools.² Movements of this sort generate reports and discussions. The reports and discussions are rarely empirical, usually conceptual, and more than occasionally anti-intellectual. Printed aggregations of testimony and documents on the imposed-course rule of the Indiana Supreme Court are an example of all three features and are of significant concern to the schools we studied.

The concern expressed in studies of this sort is concern about the availability and quality of legal services. Students, when they are considered at all, are treated as malleable. They are the raw material with which public need is to be met. Student feelings are beside the point, a neglect which is probably advertent. The implication of these studies is that students can be "taught" almost anything, good or bad. The implication when translated means that lawyers can be made to behave in whatever way the public interest requires, and the anvil on which lawyer behavior is shaped is the law school. Studies of legal education tend, therefore, to talk about training for public service, training for specialties in the practice of law, training for specific skills (especially courtroom skills), and training for moral behavior ("professional responsibility").

The Carrington Report was built around a list of educational goals, and around an elective three-tiered curriculum. Goals covered five lawyer functions—counseling, specialized practice, interdisciplinary research, allied professions, and grounding for other disciplines. The curriculum, given reader tolerance for new titles, was almost typical of

2. See Beytagh, *Prescribed Courses as Prerequisites for Taking Bar Examinations: Indiana's Experiment in Controlling Legal Education*, 26 J. LEGAL EDUC. 449 (1974).

what law schools teach now, and was therefore a generally acceptable list. But lists (and most studies of curricula) tend, as the broader studies do, to assume student malleability and to neglect what is, in our view, the heart of professionalization. If the strongest sources of lawyer behavior are in law school at all—and we doubt that they are—the sources rest more in environmental factors—climate, teaching style, etc.—than in curricular factors; more in the way people treat one another than in syllabuses for courses. Even taken on their own terms, discussions of the Packer-Ehrlich and Carrington sort tend, because they are unempirical, to assume more uniformity in legal education than we believe to be there. Methods and devices in teaching, for example, are more diverse, in numerous instances, than the report suggests. This diversity is a product of the fact that law professors are the *prima donnas* of higher education. They are free to be eccentric and many try idiosyncratic forms of teaching more often than the reports indicate. Professors in law school are, it appears, relatively uninterested in methods of teaching other than their own; they innovate, by and large, only on their own terms; they tend to be uninformed about the psychological effect of their methods on students, and their effect as teachers turns less on what they say than on the fact that a law classroom, operating at its traditional best, builds a personal connection between teacher and student.

A second report on legal education, the Packer-Ehrlich report, urged (1) that law schools collaborate with social science, (2) that they mount more programs of clinical education, and (3) that they revise the terminal end of the law-school program toward less boredom. The last point is usually stated in terms of student boredom, but not documented by any measures of boredom. We suspect one of the real problems, in any case, is professor boredom. Our research findings, and our general impression about legal education, are that collaboration with social science is talked about, but not practiced. The facts that studies of legal education are pervasively unempirical, and what empirical studies there are—in unpublished dissertations, for example—are ignored, tend to verify the impression.

“Clinical legal education,” in the typical conceptual report on legal education, means one or more of three distinct forms of educational experience. First, the term may be used to describe a classroom device in which students learn by doing, rather than by absorption or imitation. This might better be called *experience-based learning* and made to describe everything from encounter groups, used to teach counseling skills, to practice-court programs in which students try suppositious cases to mock courts and juries. It removes the teacher as model, tends to make him a companion, or, even, a mildly quaint, academic consultant.

Second, "clinical legal education" is used to mean student involvement in legal programs for poor and disadvantaged clients. Most "clinical programs" in law schools are, in our observation, of this second sort. Their principal successes have been a contribution toward redressing the legal profession's neglect of the poor, an exposure of students to the "real world" of law practice, and the provision of free or low-cost personnel to courts and law offices. Their dynamic is a simple, inexpensive one in which students spend what they regard as educational time in the practice of law. Such programs are regarded with ambivalence by legal educators, which ambivalence reflects concern at loss of control over law students, skepticism about the educational value of the programs, and concern over the quality of legal service which is provided by untutored, usually unsupervised law students. The growth of these programs has been stimulated by court rules which permit students to represent clients in litigation.³

Finally, "clinical legal education" may mean one of the rare course programs in which students and teacher join in collaborative law practice. These programs are rare because they are expensive. They reduce student-teacher ratios from the typical 1:25 to 1:10 or lower. The comparison illustrates the fact that law schools have never partaken of the financing which graduate education in social science or the humanities enjoys. They are inevitably less expensive than graduate education in the health sciences. Most law schools have made money for their universities. Clinical collaborative practice tends to duplicate the experience students and young lawyers have with practitioners. A few of the programs have produced a sub-profession within law teaching—the "clinical professor," who, more practicing lawyer than academic, is the functional equivalent of the older lawyer in an apprenticeship system.

In our view such programs, where they exist, are financed by short-term grants from outside agencies, rather than from budgets of the law schools which develop them. Their survival, we suspect, depends on the continuation of this outside funding.

The most remarkable suggestion coming out of these recent studies was that the third year of law school be abolished. It was presented, in a public hearing, mounted by the Section on Legal Education of the American Bar Association, to the deans of approved law schools, at the American Bar Association's mid-winter meeting in New Orleans early

3. See COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY (C.L.E.P.R.), STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW (2d ed. 1973).

in 1973. The law deans literally shouted it down.⁴ The fact that the suggestion was made in the first place was remarkable for two reasons. First, it was politically unrealistic. Law schools at that time were the only segment of higher education which was enjoying prosperity, and the two-year-law-school idea invited law schools to forfeit a third of this bonanza. Second, it implied that legal education was substantively ineffective. If, as everyone conceded, the law becomes more complex daily, the natural response, if legal education were effective, would be to make law school longer. The two-year suggestion and its fate in the law-school market place were, we think, empirically indicative of the fact that thoughtful legal educators are not confident of the value of law-school education.

Other studies about legal education can be described, more summarily, under a number of broad headings, such as studies about law students, complaints about legal education, studies on methodology, and studies about curriculum.

1. LAW STUDENTS

In 1972, a first-year law student at Harvard killed himself. Some of his schoolmates reacted by inviting a number of their fellows from Columbia to join them in a conversation about student feelings in law school. Some of their interaction was recorded and published in *The Journal of Legal Education*,⁵ a relatively recondite periodical which is overseen by law professors in the Association of American Law Schools, and is printed and distributed to law teachers, free of charge, by the largest American publisher of law books. "One conclusion was evident," the article said: "Law students are disillusioned about the nature of legal education, and they are confused about the role of a lawyer in society. Perhaps more important they are distressed by what becoming an attorney does to their chosen profession." One student was reported to have said: "You really become obnoxious to anyone who is not a lawyer."

That episode reveals a number of things about the subject matter of this article: lawyers rather than the law, and law students more than either lawyers or legal education.

4. See Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37 (1973).

5. See Mohr & Rogers, *Legal Education: Some Student Reflections*, 25 J. LEGAL EDUC. 403 (1973).

A. *There is a general impression throughout the enterprise that no one knows anything about how students feel.* The impression is probably no more accurate of legal education than it would be if said about clerks in the Department of Agriculture or welders at General Motors, but the impression has not been met by studies which are both available and regarded as useful. One reason is that almost everything written about law students is admonitory. It either admonishes them to do something or their teachers to do something to them.

A principal source of admonition since about 1960 has been the observation of psychiatrists who teach in law schools. These are not, for the most part, "clinical" observations. That is, they are not the product, or by-product, of psychotherapy as practiced on law students. (Dr. Andrew Watson occasionally writes a paragraph or two which is clinical, but that is exceptional, even in his work.)⁶ These studies may fairly be seen as sophisticated, even in some cases informed, speculation about law-student behavior. They usually *assume* that the law student is in a behavioral or emotional dilemma, and then characterize the dilemma as involving both anxiety and ignorance. Perhaps one reason law professors seem not to react to this literature is because it evokes in them a "so what" response. They know their students are anxious and ignorant. In fact, they depend on it.

Davis' article⁷ on law students in first-year criminal law classes is an example. Davis said he noticed too few students who were interested in criminal law (dilemma), and that this circumstance was caused by anxiety created in the student himself by the study of criminal law and the antipathy he builds as a defense to that anxiety, and by the laying of blame on the criminal defendants and lack of understanding of the social problems which cause their criminality (ignorance).⁸ Davis wrote that law students could be made more interested in crime and criminals through a process of self-discovery which psychiatry, not law, is able to make available to them. Much of Dr. Watson's extensive labor in legal

6. See A. WATSON, *PSYCHIATRY FOR LAWYERS* (1968); Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL EDUC. 441 (1974); Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968); Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1 (1963); Watson, *The Law and Behavioral Science Project at the University of Pennsylvania: A Psychiatrist on the Law Faculty*, 11 J. LEGAL EDUC. 73 (1958).

7. See Davis, *Psychological Functions in the Teaching of Criminal Law*, 44 MISS. L.J. 647 (1973).

8. *Id.*

education is of this sort, and much of it, we think, is accurate and useful. Psychiatric comment does not, though, so far as we can tell, result in changing the conditions which these psychiatrists see as the source of student difficulty. It is perhaps typical of concern and change among legal educators that, in 1963, Dr. Watson called attention to the psychological difficulty of professional identity among law students.⁹ He focused on the fact that law schools cannot seem to teach legal ethics. So far as we know, his essay did not produce a change in method or curriculum. However, in 1974-75, there was widespread ferment and change in the teaching of ethics to lawyers, ferment which has caused the American Bar Association to require instruction in professional responsibility.¹⁰ The ferment resulted from the efforts, not of Dr. Watson, but of Richard Nixon and the erstwhile lawyers who gathered around Mr. Nixon when he returned to Washington in 1968.

Watson is also critical (as we are) of the "Socratic method" in law teaching. He sees authoritarian law teaching (however called) as abusive, demeaning, destructive of creativity, and wrenching (if not worse) to personalities. Because of it, he writes, students avoid close personal relationships with one another, or with their teachers, and become dysfunctionally competitive. Psychiatrists recommend more personal approachability among law teachers, less emphasis on grade competition, less study of abstract "case" materials and more of personal experience, and increased opportunities for supervised student practice.

Maru¹¹ summarizes several studies on the social and economic background of law students. Most of these do not correlate attitudes with background, or trace the effect of background on the choice either of professional employment or student experience in law school.¹² These background studies are exhaustive, though their principal disadvantage seems to be that they do not agree with one another. Warkov and Zelan,¹³ working for the National Opinion Research Council, for example, reported that the strongest indicator of a college student's choos-

9. See Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, *supra* note 6.

10. See ABA STANDARDS AND RULES OF PROCEDURE, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS, No. 302(a)(iii) (1973).

11. O. MARU, *RESEARCH ON THE LEGAL PROFESSION: A REVIEW OF WORK DONE* (1972).

12. Although somewhat dated and addressed to a limited professional experience, a notable exception is J. CARLIN, *LAWYERS ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966).

13. See WARKOV & ZELAN, *LAWYERS IN THE MAKING* (1965).

ing to study law was the fact that one of his parents was a lawyer. This they found to be the essential element in socio-economic status as a predictor. Other studies which Maru summarizes found socio-economic status the highest predictor (in other words, legal careers are normally launched from positions of advantage) and found also that high status is strengthened and increased in and through law school. Young lawyers from the best families end up in the best firms; those from poor ethnic minorities go to small offices, and to a less aesthetic professional practice. Both studies agreed that law is more attractive to Jews than Christians, and more attractive to Catholics than Protestants.

B. *The enterprise expresses shock when the charge is made that law school is destructive.* Otherwise, we take it, there would have been nothing remarkable about the student conversation at Harvard, certainly nothing remarkable enough to commend itself to the law-professor editors of *The Journal of Legal Education*. Dominant forces in legal education recognize that the study of law is hard work, often boring hard work, but they have not recognized that it does anybody harm. Data to the contrary fly in the face of what is seen as experience and first-hand knowledge, and are therefore resisted, which in turn provokes strong language from the other side. Savoy's turbulent tour de force¹⁴ is an example of anger in the face of resistance to the charge that law school is harmful. But Savoy brought no data to the enterprise, other than his own observations as a young law teacher. Other data hinted that law students come to legal education with habits and attitudes which law school could improve, but does not. A study by Eron and Redmount,¹⁵ for example, indicated that beginning law students have more cynicism than beginning medical students, but that law school has little effect on cynical attitudes, while medical school increases them. Theilens¹⁶ found that medical students know more about medicine than law students know about law, and that both medical and law students believe medicine to have higher prestige. Personality studies summarized by Maru¹⁷ indicate that law students are high in cyni-

14. See Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

15. See Eron & Redmount, *The Effect of Legal Education on Attitudes*, 9 J. LEGAL EDUC. 431 (1957).

16. See Theilens, *The Socialization of Law Students: A Case Study in Three Parts* (1965) (Ph.D. dissertation, Columbia University).

17. These studies describe the students as hard to entertain; legal educators know about their boredom, have in fact written about it at boring length, and about their ambition, competitiveness, and resistance to socialization. Early studies of emotional

cism, have an untypically high interest in manipulating other people, and hence a high demand for creative, well-paying, prestigious, and independent professional lives.

C. *Uncertainty is to be expected.* Geoffrey Hazard, a law professor who is uncommonly outspoken about behavioral studies by and about lawyers, who was once director of the American Bar Foundation, reviewed four studies of lawyer feelings and found them all wanting: Weyrauch because his social science was bad; Smigel and Carlin because their social science was inadequate; and O'Gorman, whose social science was good, because he did not understand that the word "lawyer" doesn't mean anything:

The term "lawyer" refers less to a social function than to a type of training, a type which in fact is shared by people doing a bewildering variety of tasks. . . . To consider the study of lawyers as the study of one of "the professions" is to assume that the most distinctive feature of "lawyers" is that they are lawyers, and this assumes the answer to probably the most interesting question about "lawyers."¹⁸

Watson, commenting on "Watergate,"¹⁹ said that its cause lay in the fact that the "lawyers" involved lost their consciences (in law school, apparently), and that a principal reason for that result is that law students come seeking certainty and find more uncertainty than they are able to cope with. Donnell,²⁰ a social scientist, reports that lawyers in corporations relish the ambiguity in their lives. Strickland,²¹ a legal historian, thinks it would be dishonest to provide certainty, which can only be an illusion, and that the business of legal education is rigorous thought and the ability to change with changing circumstances.

attitudes among law students at Stanford, Chicago, and Columbia, readings taken before and during law school, indicate that law students choose law as a career later than medical students; that they understand well enough not to be damaged by uncertainty as to what will be expected of them as lawyers; and that they experience little emotional movement while they are studying law. See O. MARU, *supra* note 11.

18. See Hazard, *Reflections on Four Studies of the Legal Profession, Law and Society, A Supplement to Social Problems* (summer 1965), reprinted in 1 AM. B. FOUNDATION (pamphlet, 1967).

19. See Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, *supra* note 6.

20. See DONNELL, *THE CORPORATE COUNSEL* (1970).

21. See Strickland, *Continuity and Change in Legal Education*, 10 TULSA L.J. 225 (1974).

D. *Law students always demand something different.* They are restless, bright, pushy people. One school of response²² has it that law students' demands are inevitable, unwise, and to be resisted. This school tends to cite the traditional strengths of the legal profession, especially in England and the United States, and to attribute those to the fact that legal educators resist demands for change.²³ Oliver Cromwell said the key to his success was that he knew how to deny petitions; there is similar Puritan gravity in those who defend traditional legal education. Another result of the demand, and one which produces a significant amount of oblique and impressionistic literature on law students, is the sporadic experimental educational venture in law schools.²⁴

In terms of what can be learned about law students from these studies, one may conjecture that it is not exposure to substantive law which makes students demand change, but rather something in the atti-

22. See Fuller, *On Teaching Law*, 3 STAN. L. REV. 35 (1950); Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL EDUC. 189 (1948); Griswold, *In Praise of Bar Examinations*, N.Y. ST. B.J. 485 (1974); Griswold, *Teaching Alone is Not Enough*, 25 J. LEGAL EDUC. 251 (1973); Griswold, *Law Schools and Human Relations*, 37 CHI. B. REC. 199 (1956).

23. See Strickland, *supra* note 21.

24. See, e.g., Botein, *Simulation and Roleplaying in Administrative Law*, 26 J. LEGAL EDUC. 234 (1974); Dutile, *Criminal Law and Procedure—Bringing It Home*, 26 J. LEGAL EDUC. 106 (1973) (use of informal, extracurricular, voluntary seminars for first-year students toward increasing the vitality of class discussion); Grismer & Shaffer, *Experience-Based Teaching Methods in Legal Counseling*, 19 CLEV. ST. L. REV. 448 (1970) (use of law student encounter groups); Katsch, *Preventing Future Shock: Games and Legal Education*, 25 J. LEGAL EDUC. 484 (1973) (advocates use of games and roleplaying); Miller, *A Report of Modest Success with a Variation of the Problem Method*, 23 J. LEGAL EDUC. 344 (1971); O'Meara, *The Notre Dame Program: Training Skilled Craftsmen and Leaders*, 43 A.B.A.J. 614 (1957); O'Meara, *Legal Education at Notre Dame*, 28 NOTRE DAME LAW. 447 (1953) (reported success with problem-centered adaptations of the case method); Sacks, *Human Relations Training for Law Students and Lawyers*, 11 J. LEGAL EDUC. 316 (1959) (use of "human relations" methods). All of these teachers report enthusiastic student response; skeptical researchers might conjecture that this result was more because of change than because of creative methodology. These teachers also reported that their new approaches require additional effort and time on the part of the teacher.

A related body of experimentation involves teaching law to non-law-students. See, e.g., Gibson, *Law Students: A Valued Resource for Law Related Education Programs*, 25 J. LEGAL EDUC. 215 (1973) (advocates use of law students as teachers); Sbarboro, *Introducing Young Students to Law*, 59 A.B.A.J. 1171 (1973) (report based on pretesting and post-testing of 40,000 elementary and secondary students in Chicago that students leave such programs with heightened appreciation for the law and an improved—i.e., less cynical—attitude about it).

tudes they bring to law school, or something in the methodology and climate they find there, or both.

E. Success in law school requires conformity and effort, more than it requires personality change, but demands for conformity and effort are heavy, and some students react to them with the fear that personalities are being changed for the worse. Patton²⁵ describes an experimental study among first-year students at Yale Law School, the results of which indicate that first-year law students are capable of working as hard as the system demands. This is an important point, since it means that competitive strategies are not necessary for the task at hand, but are employed by law students, and provoked by law teachers, for other purposes.²⁶ The best performers, Patton says, are those who: (a) are systematic and well organized; (b) do not resist law-school teaching methodology (Patton says they believe that it does in fact teach them to "think like a lawyer"); and (c) admire and heed their teachers. Those who do not do well: (a) believe the management of the material is largely a matter of memorization; (b) feel misled and let down; (c) question their own competence; and (d) tend to dislike their teachers. If one compares these experimental results with other conversations of students,²⁷ it is possible to conclude that those who do not conform (and these may be most students or relatively few, depending on the times and on local climate) are unhappy in law school. It is they who feel that it is best not to volunteer answers in law classes; they who find other law students unattractive people; they who tend to form associations with other law students who share their level of achievement and their ambitions for professional employment;²⁸ and they who find non-legal subjects, and the cross-disciplinary aspects of law courses, to be more interesting than the study of "hard law." Patton found that the personal characteristics a student brings to law school play a dominant part in his ability to maintain self-esteem as he studies law and to obtain satisfaction from the system of legal education. He concluded that a belief in one's self as a capable and self-reliant person is necessary for constructive adaptation to law school. That sort of person is least likely to be touched deeply by his educational experiences; he knows how to

25. See Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10 (1968).

26. See, e.g., Silver, *Anxiety and the First Semester of Law School*, 1968 WISC. L. REV. 1201.

27. See Mohr & Rodgers, *supra* note 5; Silver, *supra* note 26.

28. See Shultz, *Law Schools and the Differentiation of Recruits to Firm, Solo, Government and Business Careers* (1969) (Ph.D. dissertation, University of Chicago).

"manage them," which means that he can keep them at psychological arm's length.²⁹

It is on this point, probably, that the researchers and the complainers and defenders might converge in their commentary on the lives of law students. It is an anxious experience for those who will not or cannot conform to it enough to maintain self-esteem. It is, for most students, particularly today, not a deeply touching experience, and this is why strident complaint, such as that evidenced by the Harvard conversation or by Savoy's iconoclasm,³⁰ tends to provoke resistance. Law-student experience does not comport with the experience of those responsible for legal education, and, maybe because they are typically without evidence, reports about law students do not challenge and do not produce change.

The point is perhaps summarized in Harvard Professor Lon Fuller's assessment of American legal education as it entered upon its present incarnation.³¹ He recognized that law schools are supposed to provide training in skills, and some knowledge, but he saw the principal mission of law schools as exposure to "great" minds and to the processes in which lawyers participate. He emphasized processes over either skills or people. He said that lawyers participate in processes; he did not say they participated in the lives of their clients. The trouble with the study of skills, he said, is that "it converts what ought to be a disinterested exploration of issues into an exercise in self-improvement."³² He left no doubt about his preference for issues rather than human beings: "Skills and techniques," he said, "should be the by-product of an educational system that concentrates on problems rather than men."³³

2. COMPLAINTS

Those who charge that the profession of law does more harm than good to human beings, along with those who charge that law schools are harmful to students, invite incredulous resistance. That is not true of those who complain about legal education in more abstract terms. The law-school world is, after all, a vast enterprise, uncertain enough

29. See Patton, *supra* note 25.

30. See Savoy, *supra* note 14.

31. See Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, *supra* note 22.

32. *Id.* at 191.

33. *Id.*

to provide something unpleasant for everyone. Most of the complaints are unempirical, but the lack of empiricism may be insignificant when compared with the realities of politics. Many complaints about legal education, most particularly the complaint that it provides too little experience and exposure to the realities of the practice of law, have been effective without evidence. There have been changes in legal education since Fuller's defensive essay of 1948. One can trace them even in essays written by Fuller's Harvard colleagues. Erwin Griswold,³⁴ former Harvard law dean and former Solicitor General (and a prestigious defender of the traditional in legal education), wrote in 1956 that the principal failure of the case method in legal education was that it had tried to teach too much. He had noticed that complaints about traditional methods were that they were too narrow, neglected recent development, and were inhumane and amoral.

By 1973, Moore,³⁵ writing in an intramural Harvard publication, was able to say that Harvard emphasized individuality in instruction, a remarkable change from the 1948-56 observations of Fuller and Griswold. Moore instanced clinical education, programmed learning, advocacy skills, and, most of all, experimentation. He quoted a point often made about his, the mother of all American law schools—a point which, in the nineteen-seventies, could be made of many other law schools, and which may prove too much: Harvard law students are so able that they would become good lawyers without even coming to law school. "As Professor Warren Seavey used to say, 'Our people are good enough so that nothing we did to them could spoil them.' " Professor Bok, then dean of the law school and now president of the university, implied the same spirit of change when he wrote, in 1969, that law students found the "Socratic method" unsatisfying;³⁶ he recommended a two-year program and advanced study (on a graduate school model) for those who propose to teach law.³⁷ Five years earlier, Professor Paul Freund³⁸ hoped that law schools would be able to keep alive a spirit of intellectual

34. See Griswold, *Law Schools and Human Relations*, *supra* note 22.

35. See Moore, *Legal Education: The H.L.S. Community Speaks Out*, HARV. L. SCH. BULL. 12 (April 1973).

36. See Bok, *A Different Way of Looking at the World*, HARV. L. SCH. BULL. 2 (March & April 1969).

37. Dean Albert Sacks, successor of Professor Bok, led the charge against these recommendations in 1973. See Stolz, *supra* note 4. Compare Shapira, *Changing Patterns in Legal Education in Israel*, 24 AD. L. REV. 233 (1972) with Bok, *supra* note 36.

38. See Freund, *Dedication Address: The Mission of the Law School*, 9 UTAH L. REV. 45 (1964).

inquiry, systematization, and community leadership. The former attorney general, Edward Levi, a law professor, law dean, and university president, expressed the same hope in 1972.³⁹

More specific complaints about legal education, from a broader variety of law-school observation and experience, have emphasized these points:

*A. It is an elite system.*⁴⁰ This complaint is focused most clearly, and most typically, on the processes of student selection and the almost universal tendency among admissions committees to rely heavily on undergraduate grades and scores on the Law School Admission Test. The result is an intellectually elite national law student body. The complaint is that young lawyers are, as a result, narrow, bookish, and intolerant of the mundane elements of daily practice. Complainers⁴¹ suggest a lottery system for admissions, emphasis on psychological qualities other than academic ability, and open-gates admission followed by high academic attrition. The commentators emphasize the emotional (and social) aloofness of the law school learning community, a circumstance which makes Hessians of law teachers and resentful conformists of students.⁴² They find in their own experience that the educational atmosphere is hostile and oppressive, and they tend to argue, sometimes by implication, for greater attention to what we call humanistic climate.

B. It is an inflexible system. Stolz⁴³ blames this on accreditation rules. Complainers of the future⁴⁴ may make the same criticism of state-supreme-court rules. State supreme courts affect law-school programs by setting minimum requirements for admission to practice; national accreditation becomes significant because state supreme courts require law degrees from nationally accredited law schools. Accreditation is, for the most part, handled by the Section on Legal Education of the American Bar Association. A few courts recognize the Associa-

39. See Levi, *The Place of Professional Education in the Life of the University*, U. CHI. L. SCH. REC. 3 (Winter 1972).

40. See, e.g., Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637 (1968); Frierson, *And the C Students Make Money*, 59 A.B.A.J. 61 (1973); Kennedy, *How the Law School Fails: A Polemic*, 1970 YALE REV. L. & SOC. ACT. 71; Smith, *Academic Aloofness: Stimulant or Depressant to Legal Education?*, 21 J. LEGAL EDUC. 89 (1968).

41. See Frierson, *supra* note 40.

42. See Bergin; Kennedy; Smith, *supra* note 40. Compare Bergin, *supra* note 40, with Savoy, *supra* note 14, and McDowell, *The Dilemma of a Law Teacher*, 52 B.U.L. REV. 247 (1972).

43. See Stolz, *supra* note 37.

44. See Beytagh, *supra* note 2.

tion of American Law Schools as an accreditor. Griswold defends the accreditation system; York finds logic in it.⁴⁵

C. *It is not diverse.* There will soon be 200 accredited American law schools. A frequent complaint about legal education is that they all tend to be the same.⁴⁶

D. *It does not produce ethical sensitivity.* Some of the literature focuses narrowly on the Code of Professional Responsibility and on other professional concerns; some of it might more properly be called "moral." Manning⁴⁷ addresses both aspects in terms of what he believes to be decay in the moral fiber of American lawyers. He argues for interdisciplinary study of ethics and morals, and a spirit of public service, but he implies that neither attitude is currently available in legal education. Starrs⁴⁸ reviews the debate between the "pervasive" teaching of legal ethics and the provision of courses; he and Manning favor the latter.

Manning's studies,⁴⁹ like several other studies of the morals of lawyers, are speculative and accidental. These often succeed, to the extent they do, because their authors have a poetic insight which tends to operate independent of their data. Hazard, complaining about Weyrauch's readable observations on the disenchantment of European lawyers, sounds a typical and accurate theme for the poetic insight and its limitations:

[M]ost people in the law are idealists who at any early age in their profession have had the searing experience of realizing that the world can be remade only by narrow degrees, no matter how brilliant and dedicated its would-be law-givers. It is in my view a capital problem of the sociology of the legal profession that underneath most lawyers are boy scouts.⁵⁰

E. *Legal education is too vocational.* Brown, who is identified

45. See Griswold, *In Praise of Bar Examinations*, *supra* note 22; York, *The Law School Curriculum Twenty Years Hence*, 15 J. LEGAL EDUC. 160 (1963).

46. Stevens and Omrod conducted a debate on diversity, focused on English legal education. Much of their data is about American law schools. See Omrod, *Reforming Legal Education in England*, 57 A.B.A.J. 676 (1971); Stevens, *American Legal Education: Reflections in Light of Omrod*, 35 MOD. L. REV. 242 (1972).

47. See Manning, *A Socio-Ethical Foundation for Meeting the Obligations of the Legal Profession*, 5 CUM.-SAM. L. REV. 237 (1964).

48. See Starrs, *Crossing a Pedagogical Hellespont Via the Pervasive System*, 17 J. LEGAL EDUC. 356 (1965).

49. See Manning, *supra* note 47.

50. See Hazard, *supra* note 18.

with legal education at a Roman Catholic institution, argues that legal education does not meet the needs of those who wish to study law as a humanity and who may not wish to practice law. He emphasizes "scientific" analysis, jurisprudence, legal history, and unspecialized subject matter—noting a number of trends, such as clinical programs, and summer study to shorten the time needed for a law degree, which evidence a vocational bias.⁵¹ Gellhorn sees vocationalism as the source of a return to the lecture in law classes.⁵² He argues, as Griswold did, that the "Socratic method" fails when law schools teach too much.⁵³ Brown tends, as defenders of the traditional often do, to favor an intensification of the intellectual aspects of legal education.⁵⁴

F. *Legal education is not vocational enough.* Every volume of *The American Bar Association Journal*, which reaches more American lawyers than any other professional publication, echoes this complaint. Hervey (who was a legal educator, a law dean, and a leader in legal education) represented the mood—as do movements for the detailed, stringent imposition of curricula on law schools. The common assumption in this part of the literature is that lawyers are made in law school. For example: "The practicing profession is . . . but the mirror that reflects the schools in which the lawyers were trained. If the bench and the bar give back distorted images of justice, it is only because the schools have failed to inspire devotion to high ideals and have not shown the paths of true nobility, intellectual greatness, and real culture."⁵⁵ On these formidable premises, Dean Hervey lamented the decline in traditional teaching methods. A questionnaire research among practicing lawyers indicates that most of them would agree with Hervey.⁵⁶

51. See Brown, *Recent Trends in U.S. Legal Education*, 26 J. LEGAL EDUC. 283 (1974).

52. See Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1 (1964). See also Richardson, *Does Anyone Care for More Hemlock*, 25 J. LEGAL EDUC. 427 (1973).

53. See Griswold, *supra* note 34.

54. See Brown, *supra* note 51. Goodhart and Robertson, both of whom compare English and American legal education, echo Brown; Goodhart from the perspective of an English university legal educator. In England, university legal education is an undergraduate subject and is conducted somewhat the same way a rigorous American undergraduate program in history or literature is conducted. See Robertson, *Some Suggestions on Student Boredom in English and American Law Schools*, 20 J. LEGAL EDUC. 278 (1968).

55. See Beytagh, *supra* note 2; Hervey, *What's Wrong with Modern Legal Education*, 6 CLEV.-MAR. L. REV. 381 (1957).

56. See Dunn, *Legal Education and the Attitudes of Practicing Attorneys*, 22 J. LEGAL EDUC. 220 (1969).

It is useful, in discussing both the too-vocational and not-vocational-enough schools of complaint, to review Hazard's criticism of O'Gorman, particularly Hazard's point that the word "lawyer" describes a body of training more than either a social function or a professional career.⁵⁷ Hazard points to three realities:

(1) Lawyering as a social function, rather than a professional function, is impossibly broad in American culture. It is never embodied (and therefore is not studiable) in a single lawyer's life and work.

(2) Lawyering as ministering to people is similar to other one-on-one, ministering professions and therefore studiable, as Donnell demonstrated,⁵⁸ with the tools of the sociology of professions (role theory, etc.); and

(3) Lawyering is a convenient focus for the study of power relationships—something which has been developed in a number of political science studies of lawyers in positions of power.⁵⁹

Hazard's urbane criticism illustrates an important fact about studies in legal education: Studies of lawyers and law students, as distinguished from studies about curriculum and method (teaching professionalism), or studies about lawyer's law (legal professionalism) tend to fall into broad categories, ripe for condemnation, when they come to their natural reading publics, lawyers and law teachers.⁶⁰

3. METHOD

Those who discuss method build their arguments on their experi-

57. See Hazard, *supra* note 18. But see O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* (1963).

58. See DONNELL, *THE CORPORATE COUNSEL: A ROLE STUDY* (1970).

59. See O. MARU, *supra* note 17; Dertke & Wills, *Investigation of the Use of Programmed Material in Legal Education*, 15 J. LEGAL EDUC. 444 (1963); Schlesinger, *Lawyers and American Politics: A Clarified View*, 1 MIDW. J. POL. SCI. 26 (1957). The readable explorations of W. DOMHOFF, *WHO RULES AMERICA?* (1967) into the "ruling class" in America affords both instruction and methodology.

60. See J. CARLIN, *supra* note 12 (interviews with Chicago "solo" practitioners), and E. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1964) (a study of the large New York City law firms), for two famous studies of lawyer conduct that are criticized by lawyers who dabble in behavioral science, and by behavioral scientists, as methodologically inadequate, or as obvious, or as both inadequate and obvious. Studies which are more carefully controlled (see, e.g., O'GORMAN, *supra* note 57, a study of New York City matrimonial lawyers) are criticized as too narrow and technical. Both bodies are to some extent warranted; our present point is that they are also inevitable.

ence as students and teachers. There is rarely any indication in the literature that the writer observed classrooms other than those he has occupied as participant. Much of what is said about teaching method is either speculative or built upon generalizations from personal experience. This limited observation should be taken into account in assessing the continuing, bookish debate over traditional law-school methods.

Patterson⁶¹ provided a useful analysis for the advantages and disadvantages of the case method, noting that it was pedagogically attractive (because problem oriented), pragmatic, and sensitive to history; that it conformed to the thought patterns of judges and lawyers, required self-synthesis of doctrinal material, stimulated thought, provided contextual introduction to terminology, and kept law teachers on their toes. He reported, though, that many teachers find students cannot synthesize, that the method wastes time. Llewellyn⁶² reviewed criticisms of the case method and Frank⁶³ condemned it. Llewellyn said he found the study of cases to be too answer-oriented; that it focused too much on subject matter and not enough on skill, and that, as literature, it provided too little information. He felt, though, that creative use of appellate opinions would be sufficient reform. More recent and less academic sources of complaint focus less on these intellectual deficiencies than on the fact that appellate opinions do not speak to the interests of human beings who come into law offices.⁶⁴

Austin's 1965 essay⁶⁵ is a valuable description of the case method, dynamically and historically. He noted, as seems clearly to be the case, that aggregations of study material for law courses have begun to include vast amounts of non-case material, including non-legal material. He said he found the traditional method, meaning both cases and question-and-answer discussion, inadequate for the raising of consciousness for law practice, too impractical, too time-consuming, boring, and

61. See Patterson, *Legal Services and Legal Education*, 4 U. TOL. L. REV. 457 (1973).

62. See LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1951).

63. See Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Frank, *Why Not a Clinical Lawyer-School?* 81 U. PA. L. REV. 907 (1933).

64. See, e.g., Redmount, *A Clinical View of Law Teaching*, 48 S. CAL. L. REV. 705 (1975); Redmount, *Transactional Emphasis in Legal Education*, 26 J. LEGAL EDUC. 253 (1974); Redmount, *Humanistic Law Through Legal Counseling*, 2 CONN. L. REV. 98 (1969); Redmount, *Humanistic Law Through Legal Education*, 1 CONN. L. REV. 201 (1968).

65. See Austin, *Is the Casebook Method Obsolete?* 6 WM. & MARY L. REV. 157 (1965).

confusing, and inappropriate to the large law classes which had begun, even in 1965, to appear in many theretofore small law schools. He recommended, as compromisers have in law faculties, that the traditional method be retained in first-year (required) courses and otherwise dropped. Second-year courses would then tend to text-book and lecture, and third-year courses to seminar discussion.

There are a number of movements to replace case-method classes; the literature on these tends to be descriptive of experiments. As long as the writer is a teacher and is describing what he does in his own classes, he feels little need to convince others of the value of his methods.⁶⁶

It is implicit in case-method teaching that the reality of the legal order has been divided into subject-matter compartments. Boyack and Flynn⁶⁷ argue that its classification system, more than the case method itself, produces the excessive conceptualization which is often found in case-method teaching. They describe (but do not report results on) a federally-funded experiment in which classes are organized around groups of learners, rather than around subject matter.

One can classify these suggestions toward a number of objectives which might, in some utopian law school of the future, be seen as a convenient way to organize instruction. Some of them⁶⁸ argue for training in the ministering aspects of law practice; some⁶⁹ for skills training in advocacy; and some⁷⁰ for deeper training in social leadership. All of

66. See, e.g., authorities cited, *supra* note 24; Casper, *Two Models of Legal Education*, 41 TENN. L. REV. 13 (1973); Dauer, *Expanding Clinical Teaching Methods into the Commercial Law Curriculum*, 25 J. LEGAL EDUC. 76 (1973); Hayes & Hayes, *Towards Objective Assessment of Class Participation*, 12 J. SOC. PUB. TCHRS. L. 323 (1973); Moulton, *Clinical Education: As Much Theory as Practice*, HARV. L. SCH. BULL. 11 (October 1972); Spring, *Realism Revisited: Clinical Education and Conflict of Goals in Legal Education*, 13 WASHBURN L.J. 421 (1975). Dauer argues for client-based methods in teaching commercial law; Moulton and Spring describe and defend clinical methods for teaching legal procedure; Sacks's (*supra* note 24) is a classical argument for human relations training; Hayes & Hayes observes that classroom discussion in law school depends on intimidation more than on rewards, since few law teachers base grades on discussion; and Casper compares the pedagogical effects of deductive and inductive reasoning.

67. See Boyack & Flynn, *Conceptual Approach to Legal Education*, 6 SW. U.L. REV. 592 (1974).

68. See, e.g., Dauer, *supra* note 66; Grismer & Shaffer, *supra* note 24; Sacks, *supra* note 66; Redmount, *supra* note 64.

69. See Casper; Hayes & Hayes; Moulton; Spring, *supra* note 66; Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974).

70. See, e.g., Boyack & Flynn, *supra* note 67.

them point, again, to Hazard's observations about the diverse functions lawyers in American are thought to perform, and many lead to the hope that Moore's description of a system in which students choose is accurate and is some sort of harbinger for a more satisfying, more human future.

4. CURRICULUM

Method is an individual matter; every law teacher, within very broad limits, is free to choose his own. Curriculum is a corporate matter; it is, typically, determined in a political process characterized by conflicting ideology, student pressure, limited resources, and the log-rolling which is familiar in the allocation of time and money by those who make decisions. Discussions of curriculum tend, therefore, to be more global and strident than discussions of method. They tend also to be diverse.⁷¹ What tends to happen, in our observation, is that proponents who propose to teach new courses are accommodated (often, depending on the density of political log-rolling involved, at an inconvenient time or in a limited format) and that those who are proposing that someone else teach the new courses are ignored. Subject-matter areas which are compelled by social and legal changes (labor law, international trade, etc.) are, of course, another matter, but, by and large, curriculum reform has tended to be either an extension of the comity which tolerates eccentric changes in methodology, or a matter for fruitless advocacy and conversation at professional meetings.

There are, for all of this, some persisting trends in the demands for curricular change, and some of this persistence may finally have an effect. One is the demand for "humanistic" legal education. Professor Reich's short essay on this subject⁷² has been passed around more than law-review articles usually are, and many of his points are congruent with the essay (and experimental report) of Sacks⁷³ on human-relations training. Reich's argument was that students should be able to pursue their interests in greater detail and should be offered broader

71. A casual sampling of suggestions in the literature for new law courses for new retooled traditional courses illustrates this diversity: behavioral science, the daily life of the law, drafting, group dynamics, humanities, interdisciplinary study, interviewing and counseling, judicial process, legal history, legal methodology, legal techniques, legislation, mediation and negotiation, problem solving, process, professional relations, public law, and social research.

72. Reich, *Toward the Humanistic Study*, 74 YALE L.J. 1402 (1965).

73. See Sacks, *supra* note 68.

consideration of behavioral science, art, and natural science, as part of their consideration of law (which, he said, should be pursued as a single subject). He argued for deeper training of law teachers and for more attention in law school to social leadership.⁷⁴ Sacks' article was in large part the report of an experiment, the results of which he found encouraging, in training law students in self-discovery and in human-relations skills.⁷⁵ Somewhat related to this are a number of essays which urge greater attention to interpersonal morality and to ethical sophistication.⁷⁶

Another body of literature on curriculum⁷⁷ argues for experimentation among legal educators and for diversity among law schools; this genre sometimes even suggests a return to undergraduate legal education.⁷⁸ There are, of course, a number of essays in defense of the traditional curriculum.⁷⁹

The classical attack on traditional methodology and curriculum remains the "plea for lawyer schools" of the late judge and educator, Jerome Frank.⁸⁰ Frank's argument for more "actual observation" of

74. See also Black, *Some Notes on Law Schools in the President Day*, 79 YALE L.J. 505 (1970); Peden, *Goals for Legal Education*, 24 J. LEGAL EDUC. 379 (1972); Strong, *Pedagogic Thinking of a Law Faculty*, 25 J. LEGAL EDUC. 226 (1973); Minsky, *Learning as an Acquired Skill*, SEMINAR REP., May 14, 1975.

75. See also Grismer & Shaffer, *supra* note 24.

76. See, e.g., Christenson, *In Pursuit of the Art of Law*, 21 AM. U.L. REV. 629 (1972); Kionka, *Education for Professional Responsibility: The Buck Stops Here*, 50 DEN. L.J. 439 (1974).

77. See Levi, *supra* note 39; Meyers, *Education of Present and Future Lawyers* (an unpublished paper for the American Assembly, June 1975).

78. See, e.g., Holton, *Outline for an Integrated Law Curriculum*, 24 J. LEGAL EDUC. 195 (1972).

79. See, e.g., Goda, *Curriculum Changes: Philosophy and the Behavioral Sciences Versus a Devil's Advocate*, 22 J. LEGAL EDUC. 206 (1969); Griswold, *supra* note 34.

80. It is mildly tempting to reformers such as ourselves to note whether Frank has had any effect. His argument of restricting appointment of new law teachers to lawyers who have had at least five years of professional experience seems to have been heeded in a few quarters; it is our impression (without data) that the employment of new law teachers from professional university programs, without professional experience, has increased; that the practice of employing teachers directly from first-degree law programs has declined somewhat; and that the practice of employing experience practitioners has, if anything, declined. His argument to make the case system "relevant" encompasses most of the change which has occurred. This is obvious in the decline of appellate material in law books, and is heralded in reports of experiments and other indications that traditional teaching methods are used less than they were in 1947. Frank's argument for more "actual observation" of legal operations and for the estab-

legal operations and for the establishment, in every law school, of a legal clinic appears to have been widely adopted.

5. CONCLUSION

A review of the Packer-Ehrlich report⁸¹ identifies the principal intellectual difficulty with most proposals for the reform of legal education—they are purely speculative. They proceed without evidence and offer suggestions which are seen as obvious, commonplace, trivial, or unproved. We are left, after surveying the literature, with the impression that it has had no effect, except, possibly, the advancement of professors who wrote it, because writing is part of a professor's life. Most of what is said is no more (or less) than good shop talk. Some of it speaks to individual teachers in a compelling way. Some of it reports on episodes and experiments which may have unseen effect in the eccentric academic world where choices are made for law students.

The moods we find most compelling in the literature are those which offer, or promise, and even seek, information for reform based on more than personal speculation and singular experience; those which open legal education to information from behavioral science, particularly from educational psychology and learning theory; and those which speak prophetically about the sinful neglect of the feelings and needs of the students who pay for the enterprise and who come to it hoping for formation in ministry, in leadership, and in professional fraternity.

lishment, in every law school, of a legal clinic appears to have been widely adopted. See Grossman, *supra* note 69.

81. Soberman, *The Future of Legal Education*, 24 U. TORONTO L.J. 96 (1974).