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# LEGAL EDUCATION—WHITHER THOU GOEST?

by

Richard B. Amandes\*

LEGAL educators are solicited continuously for law review articles. Such solicitations fall into several categories, the least attractive of which comes in mimeographed, xeroxed, or other duplicated forms. Some arrive with an impersonal title, such as Dean or Professor of Contracts. Most of us have no difficulty in dealing appropriately with such nonflattering requests.

A second category of solicitations arrives in a bundle, one for each member of the faculty, including those who have departed since the publication of the last issue of the *Law Teachers Directory*. They are ribbon copies, albeit probably from a MTST or other automatic machine. Most of these receive similar treatment to those in the first category.

The third category of article solicitation is an individually typed ribbon copy which makes some reference to previous articles written by the solicitee or in some other way indicates some research or inquiry by the writer into the solicitee's background. The ultimate in article solicitation, at least in this author's experience, has produced this Article. A letter from the Leading Articles Editor indicated a desire on the part of *Southwestern Law Journal* to publish an article during 1971 on "Changes in Law School Curriculum." The letter went on to recognize this author as an expert in the field, without indicating the basis of that judgment.<sup>1</sup> The solicitation did arrive, however, immediately after I had completed a fairly lengthy evaluation of a proposal for a new law school in the State of Hawaii, so the task seemed not only less difficult, but somewhat more enticing than many others—and of course a title had been provided.

Even among those who do not write and publish as a means of contributing directly to their livelihood, most of us are not averse to seeing our thoughts in print. As I approached the task, however, I had little expectation of being able to present any particularly new ideas or that there existed any realistic possibility of significant changes in law school curricula. Nevertheless, the more I read, the more possible the project seemed. I had no idea how many articles had been written on the subject. Without research we can all recall having been referred to articles by Beale, Pound, Llewellyn, Lasswell, and McDougal. More recently in *Southwestern Law Journal*, Joseph T. Sneed has expressed his views,<sup>2</sup> as have other leaders in legal education, such as Walter Gellhorn<sup>3</sup> and George Neff Stevens,<sup>4</sup> to name but a few. It is almost as if one has not arrived until he has written philosophically on legal education. Should this latter supposition be true, apparently I have arrived. An editor has called me a recognized expert. I am pleased to join the fraternity.

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<sup>1</sup> Surely word of a curriculum revision at this early date in the existence of the Texas Tech School of Law had not yet reached Dallas; it did not seem to be very well understood in Lubbock.

<sup>2</sup> Sneed, *Some Anxieties of Legal Education*, 21 SW. L.J. 617 (1967).

<sup>3</sup> Gellhorn, *The Second and Third Year of Law Study*, 17 J. LEGAL ED. 1 (1964).

<sup>4</sup> Stevens, *The Three Responsibilities of Legal Education: Time for Clarification*, 1 TEX. TECH L. REV. 87 (1969).

## I. THE NATURE OF LEGAL EDUCATION

Despite the suggested title, obviously I have chosen another. Before one can talk about changes in law school curricula, one must ascertain its current state, for one must have something to change, if change is to be made and understood. As the title of these words would indicate, I prefer to consider curricula as legal education.

What is legal education and what is not legal education? Perhaps it may be helpful to rephrase the question in the following manner: What can be derived from a legal education? Many responses are extant. In fact, there is little in the pages that follow which has not been presented somewhere previously, although not in the combination here suggested. Were this the "in house" publication of the law school world, the *Journal of Legal Education*, I might have more qualms about occupying the following pages. However, since *Southwestern Law Journal* has not published extensively on the subject and for those who have not previously been exposed to an educator's thoughts on how legal education might be improved, I venture forward.

A sociologist has some interesting words on the expected output of a legal education, what professional training should be.<sup>5</sup> What is desired, he says, is a set of habits—habits of mind. The first habit he describes is that of humility, of finding out, of not being certain. The medical fraternity, however uncertain it may be, seems to have developed with high skill an air of assurance in dealing with patients. The legal fraternity deals with a client who desperately wants assurance that the odds are in his favor, but his lawyer can tell him only that things look promising or that there is some hope for success. The client is left with a great deal of uncertainty. Lawyers thus have to train clients who often will not play their role. This habit of humility, which is forced on lawyers by our legal system, is one which should be expected and on the whole is an admirable trait.

The second habit is that of continuous learning. Because information becomes obsolete, one cannot assume that simply because one has an LL.B. or a J.D. and has passed the Bar that he is for all time qualified to practice law. The profession of law is a lifetime of learning rather than a lifetime of the practice of things once learned.

Thirdly, the lawyer is a problem solver. Dr. Moore concludes by indicating that the substantive content of the legal curriculum is relatively irrelevant as long as the consequence of that content is the development of these habits.

We make much of teaching students to "think." It was suggested some years ago that this may be merely a way of covering up the fact that we do not know specifically what we are trying to do.<sup>6</sup> No medical or engineering school would be content merely to teach students to think.<sup>7</sup> Llewellyn has suggested that it is more the lawyer's function to think than it is to do anything else.<sup>8</sup> It has also been suggested that learning to "think" in the sense of learning to apprehend the general principles by which specific data can be organized and understood

<sup>5</sup> Moore, *Social Science and the Future Law School Curriculum*, 44 DENVER L.J. (Special Issue) 49, 50 (1967).

<sup>6</sup> Turner, *Changing Objectives in Legal Education*, 40 YALE L.J. 576, 583 (1931).

<sup>7</sup> *Id.* at 584.

<sup>8</sup> Llewellyn, *The Crafts of Law Re-Valued?*, 15 ROCKY MT. L. REV. 1 (1942).

is more valuable, more adaptable to new problems, and longer lasting than learning by absorption or memorization of specific data.

"Thinking like a lawyer" is commonly accepted as a shorthand reference for a number of analytical skills: a sharpened sense of relevance; a concern for nuances of fact; a skepticism of the unsupported generalization; and the capacity for accurate self-expression.<sup>9</sup> Professor Casner phrases much the same idea as "a thorough grounding in basic legal concepts and the ability to perceive accurately the scope and limits of relevance."<sup>10</sup> Another Harvardian says: "A good lawyer is a professional in versatility."<sup>11</sup>

What do these habits and all this thinking do for a lawyer? We have all experienced the advantage of our legal training, but perhaps a few examples will serve to further reinforce our feelings about this training. Former Dean Dillard of the University of Virginia has made reference to the fact that during World War II lawyers were discovered to be adept in civil affairs and military government operations. He goes on to suggest that this talent was at least partially attributable to the fact that they were not so overspecialized as many fiscal or even public administration experts. Not being overspecialized, lawyers were not thrown off stride by unexpected contingencies and disruptions.<sup>12</sup> Dean Sneed of the Duke Law School has phrased it as follows:

Any lawyer who has been in other groups, functioning on matters not directly related to his own discipline, has had the wonderful experience of suddenly realizing that he had a talent other people did not seem to possess. It is a talent for organizing data, presenting it in a meaningful fashion, and pointing out the desired direction in which to move much more easily than his colleagues in other disciplines. He, in that sense, knew he was a generalist.<sup>13</sup>

Legal education has been built upon this generalist or "thinking man's" theory. This is the lawyer's hole card. In any reevaluation of legal education, or more specifically law curricula, this hole card must not be lost.

## II. THE THREE-YEAR APPROACH AND ALTERNATIVES

Top quality legal education has involved three academic years since that period was introduced at Harvard in 1899. Virtually all legal education has consumed three years of full-time study or four years of evening part-time study, at least since the adoption of the minimum standards for legal education by the American Bar Association in 1920. Indeed few if any members of the practicing bar even consider alternate possibilities.

Within legal education, however, alternate possibilities not only have been considered, but have been in effect for varying periods of time. More than fifty years ago the executive committee of the Association of American Law Schools

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<sup>9</sup> Gorman, *Legal Education Reform: A Prospectus*, 16 *STUDENT LAW J.* No. 8, May 1971, at 8, 9.

<sup>10</sup> Casner, *Faculty Decisions on the Report of the Committee on Legal Education*, *HARV. L. SCHOOL BULL.*, Oct. 1961, at 14.

<sup>11</sup> Leach, *Property Law Taught in Two Packages*, 1 *J. LEGAL ED.* 28, 30 (1948).

<sup>12</sup> Dillard, *Commentary*, 21 *U. MIAMI L. REV.* 532, 534 (1967).

<sup>13</sup> Remarks of Joseph T. Sneed in *LEGAL EDUCATION SYMPOSIUM*, ABA LAW STUDENT DIVISION 2, 6 (1967).

recommended that legal education be extended to four years. The matter produced lively discussion for two years. In 1920 the committee recommendation was not adopted by the Association. Nevertheless, at least two law schools, Northwestern University and the University of California at Berkeley, presented four-year options as alternatives to the three-year program. In return for the fourth year of law study, students were able to enter the four-year program with one year less prelaw study.<sup>14</sup> Neither program flourished; the one at Berkeley was formally abandoned in 1923. In the early 1930's the four-year alternative was once again presented. Northwestern refurbished and reemphasized its program. Stanford University introduced a four-year law alternative in 1933, again as in the prior cases waiving one year of prelaw study for those entering the program. Louisiana State introduced a similar program in 1936. The University of Minnesota introduced an optional four-year category, two years of college work being required for four years of law. Gradually through 1936 a higher percentage of students at Minnesota opted for the four-year law program (seventy per cent in 1936). As a result, beginning with the fall of 1938 only a four-year law curriculum was offered at Minnesota. The philosophy behind the program was stated by Dean Fraser at the 1936 meeting of the Association of American Law Schools in the following words:

Instead of making advanced work in the social sciences a prerequisite for law we would make law a prerequisite for advanced social science. The social sciences are taught in the colleges in a theoretical fashion, without regard to existing conditions. The lawyer's job is to apply them to existing conditions, and for this purpose he should study them after he knows the existing law and institutions . . . .<sup>15</sup>

Four-year law programs were instituted at the University of Chicago in 1937, at the University of Washington in 1938, and at Washington University in 1939.

These early four-year programs were frankly experiments. Dissatisfaction existed then regarding the accepted three-year format of legal education. It was said of the four-year programs in 1939, "Differing widely in content, yet resembling each other in many respects, the four-year curriculums of today show clearly a more widespread appreciation of defects in accepted formulas and indicate a general desire to turn out graduates who are aware of their responsibilities to community, state, and nation as well as good legal technicians."<sup>16</sup>

World War II terminated these experiments in addition to suspending the operation of some of the smaller law schools in this country. Upon the return of the veterans in 1946, five and more years older than the usual law students, little sympathy existed for lengthier law programs. In fact, it may have been the impetus applied at this time for year round law study which has carried forth to the present day, to the point where a substantial percentage of law students in Texas complete their legal education in twenty-seven or twenty-eight calendar months.

<sup>14</sup> Harsch, *The Four-Year Law Course in American Universities*, 17 N.C.L. REV. 242 (1939). This article was the source of much of the historical material in this section.

<sup>15</sup> Fraser, *An Integrated Course for Training for Lawyers*, 34 HANDBOOK, ASS'N AM. L. SCHOOLS 60, 64 (1936).

<sup>16</sup> Harsch, *supra* note 14, at 279.

More recently in Canada, McGill University has conducted a four-year law course, although most, if not all, other Canadian schools have followed the traditional American three-year pattern.<sup>17</sup> Even more recently, a proposal for a fourth year commenced with the following quote from Mr. Justice Holmes: "The business of a law school is not sufficiently described when you merely say that it is to teach law or to make lawyers. It is to teach law in the grand manner and to make great lawyers."<sup>18</sup> That certainly was the thinking behind the four-year proposals. An extension of the traditional three-year period was cited by Dean Harno in 1953 when he indicated that nine schools had lengthened their programs beyond three years, although none to four years.<sup>19</sup> Two in Texas, Southern Methodist University and the University of Texas, have since abandoned the extension beyond the conventional three academic years.

Most of this experimentation with extended periods of legal education occurred when the minimum prelaw requirement of the American Bar Association was two academic years of college. More recently that requirement has been raised to three years, and in the past five years the majority of law schools throughout the United States have shifted from the requirement of three years of prelaw work to the presentation of a baccalaureate degree for entrance. It is in large part this latter step which has provided the impetus for the change from the LL.B. to the J.D. degree.

So much for a lengthened period of legal education, whatever it may contain. What are the alternatives?

Criticism of legal education currently stems from three sources: the bench and bar, law faculties, and law students.

The bench and the bar are most vocal concerning the lack of practical skills possessed by today's law graduates. Chief Justice Burger, other members of the bench, and the trial bar lament the lack of court room skills. Office lawyers complain about the inexperience of today's law graduates in drafting and preparing the day-to-day documents that constitute much of legal practice. The lack of practical common sense in today's law graduates is lamented by all who happen to encounter the pedestrian law graduate who cannot think in terms of anything other than appellate opinions.

The consumers of legal education, the students, complain most strenuously about three years of the case system, although even that has progressed substantially in the past twenty years from what it once was. In this latter connection, the statement of a former practicing attorney recently recruited to law teaching after fifteen years of dealing with clients is interesting. Upon returning from a year of graduate study in preparation for a new post in legal education, he offered, "They sure do things differently at Siwash than they did at Podunk." Of course the answer is that twenty years later things are done differently at Podunk than they were in 1950.

Legal educators, while seeking to respond in an affirmative manner to each of the above criticisms, have some of their own. Their solutions, which indi-

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<sup>17</sup> Meredith, *A Four-Year Law Course of Theoretical and Practical Instruction*, 31 CAN. B. REV. 878 (1953).

<sup>18</sup> Morse, *Let's Add Another Year*, 7 J. LEGAL ED. 252 (1954), citing O. W. HOLMES, *The Use of Law Schools*, in COLLECTED LEGAL PAPERS 37 (1920).

<sup>19</sup> A. HARNO, LEGAL EDUCATION IN THE UNITED STATES 170 (1953).

rectly indicate their objections, are firmly stated. Interdisciplinary study is the salvation! Empirical research is the only way! In the eyes of Dean Pound "social engineering," as embellished by Lasswell and McDougal's "training for policy making," is what it's all about! Add to all these six months' experience in legal aid, perhaps six more in a prosecutorial or defender program, and some specialized programs for potential law teachers, and we have approached Dean Prosser's millenium, the ten-year curriculum.<sup>20</sup>

Law school and its curricula, or legal education, cannot be all things to all men. At least the programs of an individual school cannot so be, although some schools try.<sup>21</sup> In the absence of such an attempt, funded or not, what is it that legal educators can agree upon?

In the great plethora of material about law school curricula and legal education, virtually no dissent exists concerning legal education's strong suit, the analytical training involved in the case system prevalent throughout.<sup>22</sup> The bench and bar apparently do not complain about this aspect of legal education. If they are moved to write at all, it is about matters of more direct concern to them. Among the educators who have commented upon the subject some disagreement does exist regarding the case system, but the disagreement turns upon the length of time the case system needs be emphasized, ranging from one semester at the schools most in demand to perhaps three or four semesters at those few schools which to date have lacked enough applicants of the requisite quality to fill all the available seats. In view of the great excess of student applicants during the past two years, three- and four-semester case-system schools should not long continue to exist. In any event, despite disputes concerning the length of time which should be devoted to heavy case system analysis and synthesis, all agree that whatever part of the first year is devoted to the process is well worth it. As has been said, there is no more valuable year in an individual's life than the first year of law school, assuming reasonable diligence is devoted to it.

Legal educators also agree that the basic first year "core" curriculum is a necessity with which there need be little tampering.<sup>23</sup> There is often disagreement regarding just what constitutes the "core," but virtually all would include contracts, torts, and property, the remainder of the courses being drawn from at most ten additional subject areas, such as criminal law and procedure, civil procedure, constitutional law, agency and partnership, remedies, legal history, introductory jurisprudence, etc.

Beyond the first year, from a brief perusal of catalogues of various law schools, it appears that there is virtually no concurrence or consensus regarding programs for the second year. Indeed there may not be. On the other hand, the literature on the subject indicates a surprising unanimity on the part of legal educators concerning the make-up of the second year of law study. Starting with

<sup>20</sup> Prosser, *The Ten-Year Curriculum*, 6 J. LEGAL ED. 149 (1953).

<sup>21</sup> Ehrlich & Headrick, *The Changing Structure of Education at Stanford Law School*, 22 J. LEGAL ED. 452 (1970).

<sup>22</sup> Virtually all the literature on this subject is written by those on the professorial side of the lectern, although an occasional item does appear from the recipients, e.g., Comment, *Modern Trends in Legal Education*, 64 COLUM. L. REV. 710 (1964).

<sup>23</sup> Yale appears to be the outstanding exception at this point. Only the first semester is required there. BULLETIN OF YALE UNIVERSITY, YALE LAW SCHOOL, 1970-71, at 40.

Professor McDougal's indication that American legal education is "much too fragmented,"<sup>24</sup> or Dean Murray L. Schwartz's comment, "today's law student has almost too much from which to choose his academic program,"<sup>25</sup> one can go to the most explicit presentation of the second year by George Neff Stevens.<sup>26</sup> One will almost always find included in proposed second-year curricula courses in business entities, evidence, the Uniform Commercial Code, federal taxation, wills and trusts, and to the extent not included in the first year, constitutional law. Reasonable agreement also exists regarding an exposure to professional responsibility, perhaps not until the third year, but as a strongly desired if not required subject. Whether by conscious design or otherwise, these courses, combined with those traditionally offered in the first year, are also the common core of subjects found on most bar examinations; namely business entities, constitutional law (perhaps also including a separate listing of administrative law), conflict of laws, contracts, criminal law, equity (or equitable remedies), evidence, pleading, property, taxation, torts, wills, and all or parts of the Uniform Commercial Code.<sup>27</sup>

In 1961 the curriculum committee of the Association of American Law Schools, under the chairmanship of Professor Kenneth H. York, undertook as its mission the projection of the law school curriculum twenty years hence.<sup>28</sup> Seven members of the committee presented their curricula for 1981 in detail, while three others merely commented upon their colleagues' presentation. In summation, Professor York was moved to comment:

The impression is gained that despite variations in nomenclature and emphasis, a certain immalleability in the curricula essentials, at least for the first two years, has been effected by repeated hammerings. Indeed, the integration and consolidation of course offerings may compel a rigidity of requirements instead of a broader election. The various curricula set forth above make minimal provisions for second-year electives; and in several, the required courses make serious inroads into the third year.<sup>29</sup>

This general agreement regarding the curricula for the second year does not include agreement that these second-year courses should be taught merely by the conventional case system. Professor Gellhorn, for one, has suggested that

<sup>24</sup> McDougal, *1966-67 Issues in Legal Education*, 16 CLEV.-MAR. L. REV. 1, 6 (1967).

<sup>25</sup> Schwartz, *Legal Education of the 1970's*, 45 L.A.B. BULL. 468, 495 (1970).

<sup>26</sup> Stevens, *supra* note 4, at 107:

<i>Second Year</i>			
<i>Fall Term</i>		<i>January Workshop</i>	<i>Spring Term</i>
Business Entities	4 hrs.	Research	Conflict of Laws
Constitutional Law	4 hrs.	Writing	Taxation (Federal- Personal Income)
Evidence	4 hrs.	Negoti- ation	Wills, Trusts and Intestacy
Uniform Commercial Code	3 hrs.	Trial Practice	Uniform Commercial Code
Administrative Law	3 hrs.		Professional Responsibility
	18 hrs.		17 hrs.

<sup>27</sup> *Id.* at 96.

<sup>28</sup> York, *The Law School Curriculum Twenty Years Hence*, 15 J. LEGAL ED. 160 (1962).

<sup>29</sup> *Id.* at 187.



the second year concentrate "upon the communication and application of doctrine, with the employment of relevant resources in addition to judicial utterances, and with conscious intent to develop skills beyond those now commonly utilized in casebook courses."<sup>30</sup>

This general agreement upon the content (if not the form) of the first two years of law study and the lack of agreement among the bench and bar and legal educators regarding the content of the third year, plus the boredom of third-year students, has moved several writers to suggest that two years of law school is all that is necessary for the professional training of lawyers.<sup>31</sup> The recommendations range from a cursory suggestion that the "core" of legal learning—an introduction to our basic legal institutions, to the basic skills of legal analysis, and to basic subject matter learning—can be effectively communicated in less than two years,<sup>32</sup> to Stevens' presentation of a detailed suggestion as illustrative.<sup>33</sup> Those who suggest a two-year program recognize the current procedural limitations in connection with qualifying for bar examinations. Thus, Stanford, which has incorporated a two-year J.M. (Master of Jurisprudence) program, has denominated the degree a nonprofessional one. Theirs is an unstructured program in the second year for nonprofessionals, but at least one of their underlying purposes is the presentation of a two-year law program, which might well provide the impetus for some change of eligibility requirements for bar examinations in the various states.

Let us consider a two-year professional program of legal education followed by a bar examination. This suggestion is not intended to include a six trimester program,<sup>34</sup> merely the conventional three-year package compressed into two calendar years. It might well include the two-year proposal presented by Stevens,<sup>35</sup> which would encompass seventy-six weeks over a period of two years, only fourteen weeks less than the current requirements of the American Bar Association for accreditation of a law school.<sup>36</sup> After all, a number of law schools today are pointedly directed only toward the bar examination. Why should not some of those same schools in times of ever soaring educational costs terminate their program when the desired objective has been reached?

As students become brighter<sup>37</sup> there is less and less need to continue to use three years to convey what law students with two years or less of college absorbed twenty, thirty, forty, or fifty years ago. To those who say that law today is more complex and difficult and that, therefore, three years are still necessary, I suggest that the basic course in real property forty or even twenty years ago be compared with that of today. Was anything more complex and unfathomable than estates, future interests, and the Rule Against Perpetuities,

<sup>30</sup> Gellhorn, *supra* note 3, at 8.

<sup>31</sup> Ehrlich & Headrick, *supra* note 21, at 457; Gorman, *supra* note 9, at 8; Stevens, *supra* note 4, at 107.

<sup>32</sup> Gorman, *supra* note 9, at 10.

<sup>33</sup> Stevens, *supra* note 4, at 107.

<sup>34</sup> See Cavers, *A Proposal: Legal Education in Two Calendar Years*, 49 A.B.A.J. 475 (1963).

<sup>35</sup> Stevens, *supra* note 4, at 102.

<sup>36</sup> Minimum Standards of the American Bar Association for Legal Education, § (1) (b), Interpretation (1969).

<sup>37</sup> What judge, attorney, or even law professor has not at some recent time questioned (facetiously though it may be) his ability to qualify for admission to law school today, much less pass the bar examination?

the niceties of which are touched upon today but not dissected as once seemed to be required?

On the assumption that the time is not quite ripe for a two-year professional program (not even Professor Stevens' seventy-six-week program), there is still something to be said for giving the bar examination after two years of law study. Such a proposal was advanced in California two years ago for a number of reasons. Under it those attending accredited schools would have been eligible to take the bar examination after two years. Following the examination they would return for their third year and obtain a degree and admission to the bar (assuming success on the earlier bar examination) by completing a certain required number of third-year hours—including some specific courses. Political considerations rather than practical ones defeated the California program. The extreme number of unaccredited law schools in California exists nowhere else in the country. The fact that the recommendation did not succeed in California for political reasons should not deter other jurisdictions from pursuing the possibility. One state, Montana, a diploma-privilege state for graduates of the University of Montana Law School, currently permits the taking of the bar examination after two years for those who study law elsewhere. Variations on this procedure might well be an appropriate step in the suggested direction.

One great benefit of administering the bar examination after two years of law study rather than after three, especially if additional study before licensing is required, would be the elimination of the useless and wasted waiting period between the bar examination and the reporting of results and swearing in. Because of the great number of applicants many admitting authorities are considering or already employing various shortcuts and revisions of normal bar examination procedures in order to reduce this waiting period. If the examination were given at the end of the second year of law study, with the contemplation of additional studies in school or elsewhere, much of the pressure for prompt reporting of bar examination results would be removed.

The preceding paragraphs suggest that even with the bar examination administered at the end of two years of law study an additional educational period is contemplated. Indeed, under current accreditation procedures a school offering a two-year professional degree will not be accredited by the American Bar Association and the Association of American Law Schools, and, thus, state bar examiners will not admit a student certified by such a school. One of the stated central purposes of Stanford's two-year J.M. program is to produce a further evaluation of these accrediting requirements. Stanford, it may be remembered, refers to its J.M. degree as nonprofessional, a terminal degree for those who do not wish to complete the full program but who do not wish to be termed "dropouts."

If the suggestion that only two years of law study qualify one for a bar examination be too innovative at this point, some admitting authorities might be willing to accept each individual applicant on the basis of three years of supervised law study, even though not necessarily all of it is completed in law school. A third year of clinical experience might suffice in addition to the two basic years of study in conventional academic halls. Other agencies such as prosecutors' offices, legal defender clinics, public-interest law firms, etc., could

serve in the appropriate supervisory capacity for an applicant's third year of law study necessary before being licensed.

At the outset of this discussion of alternatives to the current three-year program, various criticisms of that program were presented. The suggested two-year professional program directs itself most specifically to the criticisms voiced by students of the typical three-year law school plan. What of the objections of the bench and bar?

Indirectly, some of the objections of bench and bar are also resolved by the basic two-year program in that the programs suggested by legal educators for the third year can be presented as third-year post-bar examination, postgraduate, or continuing legal education courses for those particularly interested in the various options.

In the more conventional approach to legal education, that is three years of study under law school supervision, what should be included in a third post-bar examination year of law study? Some programs already in existence immediately suggest various routes. Northeastern University School of Law, when reopened in 1968, was established on the principle of eleven consecutive quarters of legal training. The first three or four quarters are academic, followed by alternate quarters of academic work and supervised legal practice of various sorts. Final accreditation for Northeastern's unique program is due to be forthcoming from the American Bar Association this year, membership in the Association of American Law Schools having already been achieved in 1970. As an experimental, innovative program some changes, perhaps substantial, can be expected in the next few years. No accreditation problems appear to have been encountered, however. Stanford began a small extern program in January 1970, whereby a limited number of students in their fourth and fifth terms were able to receive the equivalent of a semester's credit for approximately six months of operational training in a designated legal position removed from the campus. Several of the supervising agencies were within close geographical proximity to Stanford; *i.e.*, adult and juvenile probation departments in adjoining counties, the San Francisco Redevelopment Agency dealing with land planning, and trial and appellate courts. Several externs were involved in the administrative process with the Center of Law and Social Policy in Washington, D.C., and one undertook comparative law training in Italy. The extern program is frankly experimental and requires each participating student to submit an analysis and report to the school and fellow students in a subsequent term. Sufficient time has not yet elapsed to evaluate the program.

Another interesting possibility and one much more in keeping with the underlying suggestion of this paper—*i.e.*, two years of basic required law subjects followed by a period of further learning, possibly removed entirely from the law school—is the planned program at Arizona State. There the first two years are composed of, for the most part, conventional basic courses on a fully-required basis. The third year, instead of involving two semesters, has been divided into four eight-week academic periods during one of which virtually all members of the third-year class will be exported to a functioning legal unit for observation and participation on much the same basis as the extern program at Stanford.

These periods not involving immediate residence at the law school may cause logistical and financial problems for the students, to say nothing of the familial dislocations involved. The percentage of married third-year students in today's law schools is extremely high. If these periods of nonresident academic credit were voluntary, or if the law schools were not far removed from metropolitan areas, many of these latter problems would be minimal or eliminated completely.

Presumably all these periods of nonresident academic credit would fall within the broad description of clinical study. Some may wish to quarrel with what precisely constitutes "clinical education."<sup>38</sup> Often the only purpose is to meet foundation grant<sup>39</sup> requirements, but it is clear that most of the programs do expose students to practical situations which certainly should illustrate that all law and legal practice is not in appellate opinions. As a start, is not and should not that be sufficient?

Just as the third year, if not the second, is rather freely elective in legal education today, clinical exposure should be a matter of election for third-year students in experimental programs such as are suggested here. For pedagogical, professional, financial, or familial reasons a number of third-year students may well be unable or unwilling to undertake the extern or nonresident period of study. What alternatives might be available to them?

The impetus for the clinical programs about which we hear so much today comes from two sources, the bench and bar on the one hand and the students on the other. The third major body involved in the question, legal educators, have their suggestions also. Many believe interdisciplinary study is the key. The SSMILE (Social Science Methods In Legal Education) program is one manifestation of this group of advocates. Dean Pound's theory of social engineering as embellished by Lasswell and McDougal's "training for policy making" is favored by another group. Both may inherently involve empirical research. Unfortunately, empirical research done well takes extensive time and planning and cannot feasibly be accomplished in a conventional semester, or worse, quarter, seminar. For that matter it may well not be productive within the period of the third year of legal education. Logistically and practically, however, it is much more possible over a period of a year, academic or calendar, than when attempted in the context of a conventional seminar or while the student is otherwise occupied with more typical materials, courses, or projects in residence in law school. Professor Kalven's jury study is perhaps the outstanding example of empirical study most familiar to lawyers and legal educators.<sup>40</sup> On a much smaller scale, but still of immeasurably greater magnitude than can be undertaken in the process of a year by even released time law students is the NORC study.<sup>41</sup> Anyone familiar with research projects undertaken by the Law School Admission Test Council is fully aware of the extensive time involved in planning and developing even the most elemental

<sup>38</sup> Council on Legal Education for Professional Responsibility, *Clinical Education—What is it? Where are we? Where do we go from here?*, 16 STUDENT LAW J., May 1971, at 16.

<sup>39</sup> How interested would law schools be in clinical education were it not for the grants?

<sup>40</sup> H. KALVEN, JR. & H. ZEISEL, *THE AMERICAN JURY* (1966).

<sup>41</sup> S. WARKOV, *LAWYERS IN THE MAKING, THE 1961 ENTRANTS TO AMERICAN LAW SCHOOLS*, REPORT NO. 96, NATIONAL OPINION RESEARCH CENTER, UNIVERSITY OF CHICAGO (1963).

research project, and these not atypically are directly involved with law school data presumably much easier to gather than items emanating from a broader, less structured community.

Legal educators at Stanford have at least considered<sup>42</sup> a special program for potential law school teachers. While most legal educators like to think that the mere exposure of a bright young individual to three years of legal education qualifies him or her for immediate entry into law teaching without any formal instruction therein, most law school faculties in this country contain evidence to refute that proposition. The Association of American Law Schools introduced the first law teaching clinic at the University of North Carolina in 1969 and is repeating the process in 1971 in Wisconsin. For more than fifteen years New York University has offered seminars in legal education for new or prospective law teachers, and other institutions offer graduate degrees in law on a smaller and less-organized basis, also pointed toward improving the quality of law teaching.

One program which could well involve a substantial part of a third post-bar-examination year might consist of the problem approach to training for professional responsibility. Practitioner and legal educator alike agree on the need for this type of program, although in light of the experience of at least one state bar,<sup>43</sup> that instruction should definitely be offered under close supervision by the law schools.

More and more is being heard of the need for paraprofessionals in law as in other professions.<sup>44</sup> The suggestions are so new and unimplemented to date that little comment can be made upon them. Once programs of paraprofessional legal education are established, students in the third or post-bar examination year might be employed as faculty or at least teaching assistants.

The third experiential or experimental year might include for some students a full semester or year of basic communicative skills. More logically this should precede the first year of law study. It may be the increasing competition among students which emphasizes the need for improved communication, but in recent years there has been substantially greater acceptance on the part of even advanced law students of suggestions that their problems, to the extent they exist, may be those of basic communication. Students have always used writing deficiencies as excuses for poor performance on examinations, but more students today are willing to work to eliminate those deficiencies. Formerly mere knowledge of the law and some rough indication of its application was sufficient for middle-of-the-class standing, but virtually all of today's law students have reached that plateau. Those who are unsuccessful are often in the failing category merely for lack of communicative skills. Law, a matter of persuasion, the communication of ideas or reasons, finds competence with the English language at least as important as the knowledge of and the ability to use the law and its

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<sup>42</sup> Ehrlich & Headrick, *supra* note 21, at 459.

<sup>43</sup> During the 1960's the ethics committee of that state bar which shall remain nameless put forth the following opinion: "*Henceforth* it shall be unethical for an attorney not to have a trust account." (emphasis added).

<sup>44</sup> Unpublished address by Wex S. Malone at the Conference of Southeastern Law Schools, Columbia, South Carolina, 1967; Ehrlich & Manning, *Programs in Law at the University of Hawaii: A Report to the President of the University* (1970).

principles. More students today are willing to accept this tenet and pursue with diligence the improvement of their writing proficiency. In this highly competitive world the importance of fluency with our language sells better than it once did.

Finally, in the realm of alternatives for the third year, one should not ignore the conventionalists, faculty, and students, who want essentially the informational type of third-year law study currently in existence in perhaps the majority of law schools in this country. The previously-mentioned report on programs in law for Hawaii suggests difficulty in recruiting law school professors to teach such courses. Conversely, one of those co-authors, with another colleague, is also on record<sup>45</sup> to the effect that many law professors like the conventional type of classroom contact. Many students and professors enjoy and look forward with anticipation to survey courses in the third year of law study not only in the rapidly developing areas but even in established but somewhat esoteric fields of study.

### III. CONCLUSION

A number of alternative changes in law school curricula and legal education have been presented. Virtually all have seen print before at least in part, although to my knowledge they have not been presented previously in this context or format. None except the last may be acceptable or even seriously considered by a segment of this readership. Should the most extreme proposition — two years of law study followed by a bar examination and admission to practice — be accepted, some two-year law schools will come into existence. Other law schools may wish to present all the alternative programs which have been suggested for the third post-bar examination year of study. Stanford's proposal comes close, although those presenting it admit that parts of the program await funding and may die in that status. Many schools will offer some of the specialties and not others. Finally, rather than the emergence of additional conventional law schools pointed toward the first two years of study, some may be created solely to offer programs involved in the third and final year of education. In Texas this latter suggestion should not meet with astonishment; virtually every recent legislature has created at least one undergraduate upper division and graduate, or separate graduate, institution.

To my knowledge, none of these proposals in the extreme is imminent at Texas Tech or at Southern Methodist. Nevertheless, I would welcome and encourage comments from any who have pursued matters to this point.

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<sup>45</sup> Ehrlich & Headrick, *supra* note 21, at 454.