1982

Developments

Roger C. Cramton
Cornell Law School, rcc10@cornell.edu

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The world of legal education—over 180 law schools, 6,000 law teachers, and 125,000 law students—is a large and varied one. The purpose of this department is to facilitate the exchange of information and ideas concerning noteworthy experiments, innovations, and developments in program, curriculum, teaching, scholarship, administration, and the like. Contributions from readers are invited. Those of a longer nature may be published as authored pieces; others will be summarized by the Editor in this space.

Brain Drain?

A story in the *Wall Street Journal* (Monica Langley, "More Professors Are Leaving Their Law Schools To Accept Rewarding Jobs in Private Practice," September 1, 1981, p. 52) reports that recent defections to private practice by a number of established academicians are "sparking a debate on the quality of legal education at the nation's top law schools." "When Robert Bork [Yale], Charles Meyers [Stanford], Irving Younger [Cornell] and Victor Schwartz [American University]—four of the nation's top legal scholars and authorities in their fields—make the same career move, the legal community takes notice."

Although the article concedes that a variety of personal and professional reasons are involved in each case, such as the desire for a new challenge and higher income, the author's thesis is that trends in legal education toward more legal theory and less relationship with law practice are also involved. "The departing professors agree that the logic and legal reasoning learned in the theoretical courses are invaluable, and that the successful attorney must find original arguments and new ways to solve problems. Their complaint is that the curricula at the top schools have become dominated by theory, which they say happens as more professors like themselves return to practice. They look at the types of professors who are replacing them, and worry about the next generation of lawyers."

The Numbers Game in Admissions

The Law School Admission Test was pioneered only a generation ago by a handful of elite law schools desiring to reduce the number of their students dismissed on academic grounds. At that time, even at the most

prestigious schools, most applicants were admitted and selectivity was modest in character. Today, nearly all law schools exercise a great deal of selectivity in admissions and LSAT scores are the most important factor in the exercise of that choice. The Law School Admission Council repeatedly warns law schools against over-reliance on LSAT scores in making admissions decisions; yet its studies report that approximately 85 per cent of all law-school admissions are explained by LSAT score alone. The results of a four-hour, multiple-choice test are perceived to be—and often are—the principal factor in determining admission to law school and, therefore, access to the legal profession.

In this context, it is not surprising that the LSAT (along with other standardized tests) has come under increasing attack in recent years.[1] Critics assert that the LSAT is not a valid predictive instrument; that it discriminates against minority students unfairly; and that many law schools place excessive emphasis on test scores.

A recent article by David Kaye provides an excellent summary of available evidence on the first two of these criticisms.[2] His article is must reading for deans, admissions officers, and admissions committees, and recommended reading for law faculty generally. Kaye's essay, which takes the form of an extended review of three recent studies of the LSAT,[3] marshalls the evidence to the general effect that the LSAT is a reliable predictor of first-year performance. Although the test does not purport to measure all attributes of the successful lawyer, there is good reason to believe that the cognitive and analytical abilities measured by the LSAT are an important ingredient of good lawyering. Moreover, the test is at least as good a predictor of academic performance of minority students as it is for other students, and there is no evidence indicating that the phrasing and content of questions or other factors have an unfair effect on minority students. Kaye does not exclude the possibility of such discrimination, but argues convincingly that existing data do not support the broad charges that have been made by such organizations as the Nader group and the National Conference of Black Lawyers.

Kay's conclusions are worth repeating:

> [T]he LSAT is [not] the be-all and end-all in law school admissions.... [T]o the extent one is interested in finding out how a prospective student will do in his first-year courses, the LSAT supplies a statistically useful bit of information, and...this information has roughly the same probative force for minority and

1. See, e.g., Allan Nairn *et al,* The Reign of ETS, The Corporation That Makes Up Minds: The Ralph Nader Report on the Educational Testing Service (Washington, D.C., 1980); David White, An Investigation into the Validity and Cultural Bias of the Law School Admission Test, Prepared for the National Institute of Education (New York: National Conference of Black Lawyers, 1980); Susan Brown and Eduardo Marenco, Jr., Law School Admissions Study (San Francisco: Mexican American Legal Defense and Education Fund, 1980).
2. David Kaye, Searching for Truth About Testing, 90 Yale L. J. 431 (1980).
3. See works cited in note 1, *supra.*

majority candidates. Nonetheless, admissions personnel should be interested in other information as well. No one has an *a priori* right to attend law school simply because he or she is unusually clever or articulate....

What is disturbing, then, about the recent spate of law-school admissions exposes, probes, and studies...is the meritocratic assumption...that admission to law school is a reward for high undergraduate grades.... [The reports argue] that because use of the LSAT may obstruct efforts to increase minority admissions, the test should be scrapped. But experience has shown that, for the present, only overtly race-conscious programs that guarantee seats for minority candidates will do much to achieve integration in law schools and in the practicing bar.... It seems preferable to use the LSAT and related data to make the best possible judgment as to academic risk, and to select an appropriate mix of students with due regard to other considerations, including minority status. Fairness in selection and accuracy in prediction are complementary virtues, not implacable antagonists.[4]

A recent popular work by Andrew J. Strenio, Jr., *The Testing Trap,*[5] adds little that is new but does call attention to the limitations of the test and tendencies toward over-reliance on it. Should a four-hour, multiple-choice test that offers some prediction of first-year law grades play such a crucial role in the selection of all future lawyers? Other qualities important to good lawyering, Strenio argues, such as motivation, judgment, idealism, integrity, perseverance, interpersonal skills, and organizational ability, deserve attention in the admissions process. Reliance on the numbers game eases work of admissions officers and committees, avoids personal interviews, and downplays undergraduate achievement and other aspects of a candidate's profile.

Candor requires the concession that many law schools do place excessive reliance on LSAT scores in making admissions decisions.[6] Some schools employ cut-off systems that have the effect of ignoring the margin of error built into the test; many schools rely on quantitative admissions formulas that may place significance on statistically insignificant differences in test scores or undergraduate grades; and most schools unashamedly announce the importance they attach to scores by publishing the average test scores of enrolled students. The practice of some legal employers of inquiring about LSAT scores despite the fact that they already have evidence of what the LSAT supposedly predicts, i.e., first-year law grades, also indicates how imbedded is the over-reliance on test scores.

The attack on standardized testing is a popular movement of substantial dimensions. Its leading spokesmen are frequently unfair in their assessment of evidence and simplistic and superficial in the breadth of their rhetoric. Their arguments have fueled legislation that is a factor in

4. Kaye, *supra* note 2, at 454–57.
5. Andrew J. Strenio, Jr., The Testing Trap (New York: Rawson-Wade Publishers, 1981).
6. The Law School Admission Council regularly warns users of its services against many of the practices discussed below. See Cautionary Policies Concerning Use of the Law School Admission Test, Part III, Users' Guide to the Law School Admission Test (LSAT) and the Law School Data Assembly Service (LSDAS) (Washington, D.C.: Law School Admission Council, 1981).

producing fundamental changes in the LSAT. Although his conclusions are suspect, Strenio raises questions concerning current admissions practice that deserve attention. Perhaps David Kaye or others identified with the Law School Admission Council will respond with constructive proposals for a well-rounded admissions process.

Law and Popular Culture

How is the lawyer portrayed in the novels of Erle Stanley Gardner? What face does justice assume in the American western? What role does law play in daytime television serials? These are only some of the questions addressed in a new course at St. Louis University called "Law, Lawyers, and Justice in Popular Fiction and Film."

Convinced that humanistic studies occupy an important place in professional legal education, yet concerned that traditional approaches to the investigation of the relationship between law and the arts have been too narrow in their scope, Francis M. Nevins, Jr., has designed a seminar which looks at law as it is manifested in popular culture. He emphasizes that law is not just a technical skill to be acquired but an intellectual discipline with broad cultural implications. Students are encouraged to explore the wide variety of attitudes which their future clients are likely to hold towards them, be they indifferent or extreme, searching or stereotypical, fair or unfair.

Before each weekly seminar students prepare a list of required readings, which may draw from mystery, science-fiction, western adventure, or political drama. Television movies and series-episodes are frequently assigned for independent viewing. Class time is devoted to lectures on individual authors and genres, discussion of recurring legal themes, and the screening of less readily accessible cinematic materials. Major new theatrical film offerings are investigated as a group. In addition, each participant is responsible for the research and presentation of an original paper. Topics emerging from Nevins's seminar have ranged from "The Depiction of First-Year Law Students" to "The World of William Faulkner."

At the same time that the course serves to broaden the study of law and lawyering by modifying the structure of investigation, it also tends to refresh a curriculum which has often turned stale for students and faculty alike. Those who feel a penchant for popular fiction and film and are interested trying a similar experiment are encouraged to contact Francis M. Nevins, Jr., St. Louis University School of Law, 3700 Lindell Blvd., St. Louis, MO 63108, for further information about his course.

A Multi-Media Approach to Evidence

Convinced that the most appropriate forum for fundamental training in litigation skills is the course in the law of evidence, David A. Sonenshein of De Paul University has designed an Evidence course which utilizes

video vignettes in teaching students to apply the rules of evidence to in-court situations. Used routinely on a topical basis the video-taped fragments, one to three minutes in duration, involve the examination of a witness in a courtroom setting, raising one or more evidentiary problems. In a typical class after a brief discussion of a specific evidentiary rule, students are asked to watch the films as if they are in the courtroom, either in the role of attorney or in the role of judge, and be prepared to make an objection and an argument in support thereof, or a ruling and a basis therefor, at the appropriate time. Review sessions require the students to draw on a bank of knowledge and experience to deal with any of a variety of issues which arise without warning.

Not only do the video vignettes add a dimension of realism to the traditionally theoretical evidence course, but students report that they find it easy to "keep the parties and issues straight in their minds" when they can observe "live" testimony. The visual experience seems to aid the memorization of learned rules, and students develop a facility for identifying objectionable matter by ear, making the instantaneous law-to-fact application required of the trial lawyer.

A more detailed description and evaluation of the course is available from David A. Sonenshein, De Paul University College of Law, 25 East Jackson Boulevard, Chicao, IL 60604.

Law School Credit for Non-Law Graduate Study

As an aid to resolving some of the issues relating to the expansion of the formal joint-degree program at Case Western Reserve University Law School, Hugh A. Ross surveyed AALS members on the extent and structure of their concurrent graduate-school and joint-degree study programs during the 1979–80 academic year. His questionnaire elicited responses from two-thirds of the member schools, yielding a number of interesting results.

Seventy-two percent of the respondents gave law-school credit for non-degree course work undertaken at other branches of the same institution. Only thirty-nine percent gave credit for similar work done at other universities. The median maximum credit allowed for such law-related study was six semester hours.

Approximately the same number of schools (although not the same schools) granted law-school credit for outside graduate work leading to individually designed dual degrees. In these cases the median allowable credit was ten semester hours.

Seventy-two percent of the respondents reported a total of 225 formal joint-degree programs, of which law and business administration were the most common and law and public administration a close second. For these programs a median of twelve semester hours was the maximum allowed.

Attempting to correlate quality of the law school with commitment to formal joint-degree study, Ross ranked respondents according to an objective index of resources, which correlates fairly well with subjective evaluations of overall school quality. Schools rating well on the resource index were more likely to have joint-degree programs and be committed to the concept than schools which were found at the lower end of the resource scale.

Those interested in further details about Case Western's motivation for this survey, specifics of the questionnaire and response patterns, and researchers' expectations and conclusions should contact Hugh A. Ross, The Franklin Thomas Backus School of Law, Case Western Reserve University, Cleveland, OH 44105.

Improving Law School Teaching

The Law School at Washburn University of Topeka reports a remarkably successful weekend clinic, designed to improve individual teaching performance by encouraging self-analysis, facilitating group evaluation, and promoting discussion of general issues of educational goals and teaching methods.

The main activity of the weekend involved the review of video tapes demonstrating both the variety of teaching techniques in general and the specific performances of individual clinic participants. As might be expected, the group was composed of faculty commanding many different teaching styles, and the classes video taped covered a wide range of sizes, levels, and subject areas. As a result, participants were able to compare the effectiveness of a variety of approaches in a rich diversity of situations. A relaxed and supportive atmosphere accompanied the free exchange of ideas in a process which, it is hoped, will continue on an informal basis for a long time to come.

Sitting through "live" classes taught by their colleagues, participants were able to respond even more immediately to strengths and weaknesses of method and material—an experience which led many to conclude that classroom visits should not be reserved solely for the review of untenured faculty but should, rather, be incorporated into a regular program of on-going, in-house teacher training. Among other accomplishments of the clinic cited by participants was their renewed awareness of some of the pressures facing law students, the difficulty of material, their high expectations, and limited attention span.

Faculties interested in the details of the Washburn teaching clinic should contact William Rich, School of Law, Washburn University of Topeka, Topeka, KS 66621.