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1982

Developments

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Recommended Citation
Cramton, Roger C., "Developments" (1982). *Cornell Law Faculty Publications.* Paper 1357.
http://scholarship.law.cornell.edu/facpub/1357

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Developments

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.

Representation of Women and Minorities Among Top Graduates of Twenty Leading Law Schools

How well do women and minorities perform in law school? This question has been the subject of much discussion since the underrepresentation of these groups on the staff of the *Harvard Law Review* led to proposals for their representation through quotas or other devices.[1] Although women constituted 30 percent of the Harvard student body in 1980–81, only eleven of the eighty-nine members of the *Review* (12.4 percent) were women.[2] Similarly, although minorities constituted 13.9 percent of the Harvard enrollment in 1980–81, only one minority student was represented on the *Review* staff.[3] Is the underrepresentation of women and blacks among law students with the best grades at Harvard characteristic of the law-school world generally?

Information compiled by the then dean of one of the nation's leading law schools indicates that members of minority groups[4] are greatly underrepresented and women slightly underrepresented in the top graduates of leading law schools.[5] Although minority students and women constituted 10.4 percent and 27.2 percent, respectively, of the J.D. graduates of the twenty law schools which produce the vast majority of law teachers at the same group of schools,[6] less than 1 percent of the minority

1. See Law Review Acts to Admit Minority Group Members, Harvard Law Record (Feb. 13, 1981), pp. 1, 16.

2. *Id.* at 1.

3. *Id.*

4. "Minority group" is defined in accordance with the definition employed by the federal government and the American Bar Association: black Americans, Mexican Americans, Puerto Ricans, other Hispanic Americans, Asians, Pacific Islanders, American Indians, Alaskan Natives, and other minorities. See tables entitled "Survey of Minority Group Students Enrolled in J.D. Programs in Approved Law Schools" in Legal Education and Admissions to the Bar Section, American Bar Association, A Review of Legal Education in the United States (hereinafter cited as A Review of Legal Education) for the years 1976 through 1980.

5. Charles J. Meyers, Non-Tenured Law Faculty "Availability Pool" (May 4, 1981) (unpublished memorandum from Dean Charles J. Meyers, Stanford Law School).

6. The schools included in this study were identified in an American Bar Foundation report as those producing the majority (approximately 60 percent) of law teachers who teach at all ABA-approved schools. Donna Fossum, Law Professors: A Profile of the Teaching Branch of the Legal Profession,

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graduates and only 23.2 percent of women graduates ranked in the top 10 percent of the total J.D. students during the five-year period 1976-80.[7] White males, who constitute about two-thirds of the J.D. graduates of these schools, garnered over three-fourths of the positions at the top of these five classes.

The data was collected in order to provide base information concerning the "availability pool" of women and minorities eligible for nontenure teaching positions at the twenty leading law schools. The assumption of the study was that nearly all new law teachers would be hired from those law schools which in the past have produced the vast majority of law teachers and that for the most part only graduates with academic records placing them in the top 10 percent of their class would be considered for faculty appointment at these same schools.[8] Because equal-employment guidelines require a determination whether minorities or women are currently being underutilized,[9] the proportion of these groups in the total availability pool is a matter of considerable concern. Since entry-level faculty appointments are generally made from the pool of law graduates one to five years out of law school, the proportion of minorities and women who placed in the top 10 percent of those graduating classes at these schools constitutes the availability pool with the "requisite skills" from which new nontenure faculty members are recruited.[10] The study

1980 A.B.F. Research J. 501, 507. Almost 90 percent of the tenure-track faculty at the twenty leading law schools held J.D. degrees from this same group of institutions. *Id.* at 528. The percentages of minority students and women in the total J.D. graduates of these twenty schools during the period 1976-80 were compiled from data published annually in A Review of Legal Education, listing the number of J.D. graduates by each school, including the number of women. Because the data reported comes from different sources (some reported privately to Dean Meyers and the rest from the ABA Review of Legal Education), there are some discrepancies in the figures.

7. Data concerning the number and proportion of women and minorities in the top 10 percent of graduating classes at the twenty schools was taken from the Meyers memorandum, *supra* note 5, at 4.

8. *Id.* at 2.

9. 41 C.F.R. § 60-2.11(b) requires:

> An analysis of all major job groups at the facility, with explanation if minorities or women are being currently underutilized in any one or more job groups. . . . "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. . . .

10. 41 C.F.R. § 60-2.11(b) sets forth a number of factors to be considered in determining whether minorities and women are being "underutilized" in any job group. The most significant factors for law schools recruiting new nontenure faculty members are:

> The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit.
>
> 41 C.F.R. § 60-2.11(b)(2)(iv). Dean Meyers points out that:
>
> As used in the Guidelines, the term "availability" is not well defined. The premise of this survey is that graduation in the top ten percent of the class is the basic essential requirement for law teaching. This group of top graduates . . . forms a base pool which may be considered "available" for non-tenured teaching positions.

Meyers, *supra* note 5, at 2. He goes on to say that the availability pool for recruitment is presumably limited to classes graduating within the past five years from the twenty leading schools. His presumptions rest on demonstrated past hiring practices. See Fossum, *supra* note 6.

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concludes that "[w]omen constitute 23.2% of . . . [the] five-year base pool; [and] all minorities constitute only 0.7% of that pool."[11]

Table 1 reports the number and percentage of women and minorities in the top 10 percent of J.D. graduates from the twenty law schools by year, the number and percentage of women and minorities in these graduating classes, and the total number of graduates and number in the top 10 percent of each class.

Representation of Women and Minorities Among Top Graduates of 20 Leading Law Schools, 1976-80

YEAR	WOMEN				MINORITIES				TOTAL J.D. GRADUATES	
	No. J.D. Grads	%of all J.D.s	No. in Top 10%	% in Top 10%	No. J.D. Grads	% of all J.D.s	No. in Top 10%	% in Top 10%	No. J.D. Grads	No. in Top 10%
1976	1,245	21.5%	94	18.5%	449	9.6%	4	0.8%	5,789	533
1977	1,442	24.9%	105	21.0%	455	10.5%	1	0.2%	5,790	590
1978	1,612	28.0%	143	25.3%	597	10.4%	7	1.3%	5,765	567
1979	1,759	30.4%	149	25.3%	632	10.9%	4	0.7%	5,777	499
1980	1,823	31.4%	120	21.7%	600	10.3%	2	.0.4%	5.808	508
	7,881	27.2%	651	23.2%	2,733	10.4%	19	0.7%	28,929	2,810

Table 1

Comparable data concerning the academic performance of women and minorities at other law schools is not available. A comparison of the representation of women and minorities in the twenty leading schools with that of the law-school world as a whole indicates that the former are fairly representative in these broad demographic characteristics. During the five-year period involved in the study (J.D. graduates from 1976-1980), 25.3 percent of the J.D. graduates of all ABA-approved law schools were women, as compared with 27.2 percent at the twenty leading schools.[12] Similarly, minorities were slightly more heavily represented in the leading schools than in all ABA-approved schools: 10.4 percent of the J.D. graduates of the leading schools were minority students as against less than 9

11. Meyers, *supra* note 5, at 3. Five of the nineteen minority graduates who finished in the top 10 percent of the twenty schools were black.

12. The percentage of women J.D. graduates at the twenty schools was computed as explained in note 6, *supra*. The percentage of women J.D. graduates at all ABA-approved law schools was computed by consulting the "Number of Degrees Conferred" table in A Review of Legal Education, *supra* note 1, for each of the years 1976 through 1980. The number of women J.D. graduates at each approved school is listed parenthetically next to the total number of J.D. graduates; and the percentage for all schools for the five-year period was computed from these listings.

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percent for all approved schools.[13] The number and percentage of women and minorities of J.D. graduates of all ABA-approved law schools is reported in Table 2.

Women and Minority J.D. Graduates at ABA-Approved Schools, 1976-80

	J.D. Degrees Awarded	Women J.D. Graduates		3rd & 4th-Year Minority Students	
		No.	% of total	No.	% of total
1980	35,059	10,569	30.1%	3,037	8.7%
1979	34,536	9,735	28.2%	3,198	9.3%
1978	33,270	8,635	26.0%	3,030	9.1%
1977	33,541	7,651	22.8%	2,988	8.9%
1976	32,591	6,238	19.1%	2,633	8.1%
	168,997	42,828	25.3%	14,886	8.8%

Table 2

Law-School Suicides

Despite the generally high suicide rate among both practicing attorneys and students in general, a recent University of California at Davis study concludes that law students and young lawyers have a significantly lower rate of suicide than the average population in the same age group. A survey of the 170 ABA-approved law schools (with 86 percent of the schools responding) found 35 completed suicides and 25 attempted suicides during the period from September 1974 to December 1980. The overall annual rate of 7.41 suicides per 100,000 law students per year is a rate less than half that of the general population. It also compares favorably with the suicide rates of graduate students, medical students, and practicing attorneys.

The authors of the study concede that their findings are "contrary to expectations." Given the highly competitive and stressful environment of

13. The percentage of minority J.D. graduates at the twenty schools was computed as explained in note 6, *supra.* Since no comparable figure for minority-group graduates at all ABA-approved law schools is published by the ABA, these figures were derived from third- and fourth-year minority students in ABA-approved law schools in the prior October, on the assumption that most of these students are J.D. graduates later in the same academic year. Since several schools did not report minority students to the ABA for one or two of the five years involved, the overall minority-group figure is an approximate one: it overstates the number of minority graduates in that some enrolled students do not graduate and it understates them because of relatively minor omissions of data. It is believed that the minority-group figure for all ABA-approved law schools of about 9 percent is a close approximation of reality.

law school, one might expect law students to fit into the high-risk category of other students and professionals. The surprising results clearly indicate otherwise. The rate of suicide for male law students, based on 25 of the 35 reported suicides, is 7.88 per 100,000, less than one-third of the national rate. The rate for female students was even lower, at 4.7 per 100,000, also less than the rate for age-matched peers.

The authors suggest several possible explanations for the strikingly low rate of suicide for law students. Underreporting of suicides by law schools due to stigma and an inadequate representation of law students may account for the decreased rate. A more interesting speculation, however, is that the "socialization" process of law school tends to inhibit suicide. The authors hypothesize that law school "pulls for clarity of social role" and contributes to the integration of the law student into a social order. The study may be obtained, while copies last, from one of the coauthors, Fran Pepitone-Arreola-Rockwell, Depatment of Psychiatry, Women's Resources and Research Center, University of California at Davis, Sacramento, California 95616.

Legal Education and Public-Interest Practice

The American Bar Association's Code of Professional Responsibility provides that "Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."[1] Does legal education discourage law students from the practice of public-interest law? A recent paper by Robert V. Stover suggests that it does. Stover argues that, though earlier studies supporting this contention were in many ways misleading or exaggerated, later and more empirical studies fail to disprove the crucial point that during the course of their legal studies law students become significantly less inclined towards public-interest practice.

Stover's findings are based on research he conducted while attending law school at the University of Denver. One hundred three students answered questionnaires at the beginning of their law-school courses in fall 1977 and again during their final term. The questions were designed to tap political and social values, evaluations of client groups, and student conceptions of the lawyer's role. During law school the students became slightly more politically conservative, more supportive of business interests and less sympathetic to groups challenging those interests, and more likely to deemphasize public-interest practice in their view of the proper role of the attorney. Their preference for jobs with a public-interest component clearly dropped, and at the same time their preference for private practice increased markedly.

1. Code of Professional Responsibility EC 2-25.

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In an earlier study of Wisconsin law students, Erlanger and Klegon obtained similar results but argued that the changes were largely the result of a more realistic view of the legal profession and available jobs.[2] Stover, however, stresses the effect of these attitudinal changes on the legal profession's willingness to provide adequate representation for all. The unpublished paper, available from Stover at the Department of Political Science, University of Colorado at Boulder, 106 Ketchum, Campus Box 33, Boulder, Colorado 80309, does not explore whether these changes are the product of the law-school experience alone or a combination of this and other factors; it should be of concern to those who determine the shape and content of American legal education.

Simulated Litigation

In an attempt to inject some realism into the first-year civil procedure course, Howard W. Brill of the University of Arkansas has designed a simulation exercise that introduces students to an actual lawsuit and provides them limited experience in interviewing clients, drafting pleadings, presenting motions to a court, using discovery techniques, and seeking judicial review. The simulation supplements rather than replaces traditional classroom instruction; it aims to demonstrate to students how the rules and principles of a basic civil procedure course actually work in the context of a single case that extends throughout either a one or a two-semester period. Brill assigns three-student "law firms" to represent the parties in a lawsuit, such as a personal injury suit arising from an auto accident. Additional claims such as loss of consortium to the spouse, punitive damages against a drunken driver, and a counter claim for slander against the plaintiff may be inserted to complicate the action. During the course of the lawsuit, the student teams prepare four written assignments and engage in several simulated hearings.

Brill tailors the written assignments to the realities of law practice. Failure to complete an assignment when due results in a student's dismissal from the course just as the failure to meet the statute of limitations would result in the dismissal of the client's cause of action. Students may rely on form books, as real lawyers often do, but Brill cautions students to avoid "legalese." Brill also includes deliberate mistakes of venue, service of process, or factual allegations in the master pleadings for the student defense lawyers to detect and argue in their motions for dismissal. Students have thus far responded with overwhelming support for this experimental addition to the first-year civil procedure course. Though it requires more work for both the professor and the students, the value of the litigation simulation, according to Brill, is that students "are

2. Howard S. Erlanger and Douglas A. Klegon, Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns, 13 Law & Soc'y Rev. 11, 30 (1978).

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more willing to consider procedural reform, policy, and broader concerns, and they are better able to do so." For a more detailed discussion, write Professor Brill at the University of Arkansas School of Law, Fayetteville, Arkansas 72701.

The Business of Law School

The Editor has received the following letter from a third-year student at an AALS member school:

I see the cost of private legal education soaring, yet I see little imaginative introduction of anything novel or theoretical into the law curriculum. In the end I expect that the law schools will be peopled only with the sons of the very rich, and that the sole legal topic will be: how to justify soaring legal costs when billing a client. This will not produce a jurisprudence, although it may produce a peculiar kind of ethic of the market place transplanted into the domain of the law. This worries me very much.

During my doctoral study in the philosophy of law at [a well-known European university] I wrote a long and detailed dissertation on the subject of criminal intention. After returning to America seventeen months ago and entering this law school, I tried to talk with some of the faculty about ideas and the law. The topic was out of bounds and I was *persona non grata.* Only two faculty members had an interest in what I had done.

Although I had written and studied in depth about the law, it made no impress here. The attitude was, "who needs to learn from him?" This kind of yahooism was new to me, but then I began to identify its source. Law, and its study, was here a simple instrumentalism, with law school only a hurdle in the way of making money through the law. Classes were not to be adventures in ideas; to the contrary, they were barriers one needed to surmount with the help of Gilbert, Emmanuel, etc. I have yet to see a serious discussion of a legal case or concept in law school. Law is a business and students and teachers alike approach it with a business mentality.

My intention is not to sound like a disgruntled critic. I have returned to life in America after an absence from the country of over a decade, and I have found that our standards have become rigidified and our imagination, as teachers, a bit pre-senile. Law school could be an imaginative experience, but it is not. A law curriculum ought to function like a stage; on it or in it one can present whatever one wishes to present. If Langdell could change matters over a hundred years ago, why not something novel again? Although a few faculty members agree with me, most are frightened and refuse to take the challenge seriously.

American legal educators seem to think that they can expend money exponentially, gathering in most of it from students at ever higher tuition charges, and that such an expenditure will in and of itself guarantee the success of the academic program. Money is both our genius and our

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downfall. It will not supplant imagination, as the U.S. Patent Office, sadly, is discovering. A rebirth of critical and imaginative faculties is a pressing need.

Teaching Legislative Drafting

A common criticism of law schools is the inadequacy of instruction in legal drafting. Despite recommendations by the American Bar Association and the Lammers' report (Legislative Process and Drafting in U.S. Law Schools, 1977), the call for new teaching materials and techniques has largely gone unheeded and few law schools have added drafting courses to their curriculum. A recent paper by Robert J. Hopperton of the University of Toledo addresses these needs by presenting a course in which students are constantly required to analyze and write legislation on a variety of topics familiar to them, such as landlord-tenant law. The course includes twenty writing and drafting assignments as well as workshop-type classes where both enacted legislation and student drafts are rewritten and analyzed. While the organization and planning in this course is time-consuming, Hopperton's own experience indicates that law students are learning not only essential basic drafting skills but also how to apply the analytical skills dealt with in their other courses. A detailed description of the course is available from Professor Hopperton, University of Toledo College of Law, Toledo, Ohio 43606.

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