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COMMENT

Legal Education Can Be Cheaper,
Quicker and Better

*Paul G. Haskell**

LEGAL EDUCATION is currently being subjected to an enormous volume of criticism from students, faculty members and practitioners. The student newspapers and law reviews regularly publish material describing the inadequacies of our law schools, some of it thoughtful and sophisticated, and some of it unprofessional and faddish. Practicing lawyers frequently express their dismay at what they consider to be the inadequacies of current legal education with respect to instruction in fundamentals. At the same time all higher education is under severe financial pressure, although law schools are better equipped to weather the storm than other divisions of the university because of their traditionally high student-faculty ratio. So despite the criticism, assuming *arguendo* that some of it has merit, the likelihood of innovation which significantly increases the cost of legal education is not great in the foreseeable future. The purpose of this article is to suggest specific changes in legal education which would, in my opinion, not only enhance its quality but also make it less expensive — certainly a remarkable combination.

Before beginning the discussion of my proposals, brief mention should be given to the principal criticisms which are currently made of the law school academic program by students and academicians. One is that legal education treats the law as a discrete discipline without relationship to other fields of knowledge, such as economics, psychiatry, sociology, criminology, and computer science, among others, whose conclusions, however tentative and unreliable they may be, are relevant to an intelligent resolution of legal problems. Courses in labor, antitrust, and corporate finance, for instance, should be taught with the regular and substantial participation of an economist knowledgeable in those areas. Assuming the content of traditional legal analysis is not reduced to make room for the addition of the economist's insight, it is clear that such would be a most desirable development for legal education. Here and there law

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schools have an economist or a criminologist or a psychiatrist on the faculty. There clearly is a recognition in legal education of the need for interdisciplinary instruction. But if this is going to be truly effective, it means that the economist, for example, must have specific and substantial course responsibility in the law school; the occasional borrowing for the guest lecture merely creates an interdisciplinary appearance. The substantial addition of such nonlegal specialists to the full-time faculty necessarily makes legal education more costly. The interdisciplinary idea must be kept in mind and pushed when opportune, but it is naive to propose a serious advance in this area of educational reform in the near future. Increasing the number of faculty in relation to the number of students, which is necessarily involved in this innovation, does not appear to be the wave of the immediate future. Reducing the ratio of lawyer-teachers to make room for nonlawyer-teachers would not serve the best interests of legal education. The interdisciplinary element must be in addition to, and not at the expense of, traditional instruction if it is to contribute to the advance of legal education. This is because the law school is part of a process of certification that an individual is qualified to perform a certain technical function, and in this respect it differs radically from liberal arts education. This technical, or professional, function is served by the substance and process of traditional law school instruction.

Another frequent criticism is that law school education is deficient with respect to clinical training. Until recently, the formal academic program of most law schools contained no clinical element. Now many law schools offer credit for clinical experience dealing usually with the problems of urban indigents. By way of contrast, the professional education of the medical student has involved a great deal of clinical experience, and legal education has been unfavorably compared with medical education in this regard. It appears that legal education is trying to do what medical education has done, although on occasion it is not clear whether the function of clinical legal education is education of the student or service to the poor, which are two very different matters. It should be noted that the full-time faculty-student ratio in medical schools is in the area of one to one, and there are usually part-time instructors in numbers equal to or in excess of the number of full-time faculty. The cost of educating the medical student is at least 10 times that of educating the law student. This is not to suggest that the difference in cost is wholly attributable to the expense of clinical education,

but certainly a significant portion of it is. A teacher going through a ward with two or three students is very expensive.

My point is that if legal clinical education is to be worthy of academic credit, and indeed safe for the client, it must be closely supervised, and this is something for which the law school with its 20 or 25 students per professor is not presently equipped. Sending students out to a legal aid office to do routine chores and report back to a faculty member periodically may add to the students' personal growth as all new experience does, but it is not within the definition of education for academic credit. Academic credit has to do with the systematic and measurable accumulation of knowledge and development of skills; if it were otherwise, then all law firm employment would draw credit, for certainly there is learning involved in the lowest level, part-time student job in the law firm. Given the staffing of law schools, true clinical education must be limited to a handful of selected students; if it is offered to large numbers of students it should more appropriately be called clinical experience rather than clinical education. If true clinical education is to be offered to law students generally, it will cost vast sums of money, which clearly are not forthcoming.

My impression is that the lack of adequate supervision in much of what is called clinical education today produces a dilution of academic standards. Furthermore, the emphasis upon the social service aspect of legal clinical education suggests a confusion of values which has adversely affected academic standards in higher education generally. The only social service which the law school is presently established and qualified to perform is to assist in the preparation of prospective lawyers in the substance and reasoning of the law. When the law school views itself as a legal settlement house staffed in large part by people not yet fully educated or trained in the law, the student, the profession, and society are the losers.

Mention should be made of the criticism which has to do with the idea of relevance in legal education. The argument is that the law school curriculum is slanted to "establishment" needs and does not deal adequately with the needs of society generally and of its less fortunate members. I do not believe this criticism has much merit. Landlord-tenant law, consumer law, and marital law have been taught in traditional courses for years. Rights of the criminally accused have been treated at length in the law school curriculum in the past decade. Courses dealing with our natural resources are now common. Most of the law teachers I know encourage a critical ap-

proach to those subjects in the classroom. And, of course, the socially concerned student is discovering that such "establishment" subjects as corporate finance and business law generally, as well as a wide variety of federal regulatory law, are quite relevant to the needs of inner city development. Sometimes it appears that the cry for relevance in law school has to do with the absence of instruction in the "tricks of the trade," or "how things really get done" in practice. I would suggest that this type of "education" cannot be taught in law school, but rather must be obtained through experience.

A word or two should be said about some current criticism of methodology in law school instruction. In my 9 years as a law school teacher I have heard and participated in hundreds of hours of discussion of the merits of the "Socratic" method, the case method, the problem method, the lecture method, the use of textual material, and the advantages of the large class, the medium-sized class, the small class, the seminar, and so on. But there is a zealous group in legal education which is now proposing a radical methodological innovation, namely the elimination of professorial control of the classroom. The argument seems to be that the presence of authority interferes with learning and stunts creativity, and consequently it is proposed that the students should be permitted to determine the substantive content of the class discussion and of the course itself, at least within the broad limits of the course description. The advocates of this approach express contempt for the traditional learning and logic of our legal system and emphasize the importance of compassionate comprehension of human problems. The function of the law school professor in this methodology is not clear. This methodology certainly is intellectually egalitarian and antischolastic, and it may be less charitably described as anti-intellectual. But then there are many in academe today who value commitment over reason. This all appears to be reflective of despair, sometimes genuine, sometimes faddishly feigned, over social and international conditions. Anyone wishing to learn more about this new academic cult should read the remarkable article "Toward a New Politics of Legal Education," by Professor Paul Savoy.¹

Now I turn to my criticisms of legal education and my proposals which will simultaneously reduce expense and improve quality. I believe that legal education takes entirely too long, and that, without sacrificing an ounce of substance or a moment's class time, law school could be compressed into about 2 calendar years. This is not original

¹ Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

with me; Professor David Cavers of Harvard Law School made the same proposal in 1963.² Nothing came of the Cavers proposal, for all practical purposes. But these are different times, and the proposal is ripe for reconsideration. My other idea is that the present elective system, which typically allows the student to take what he wants after the first year and in the order he wants, is not good education. I believe that at least two-thirds of the student's instruction should be required and the sequence specified.

I shall deal with the elective system first. Twenty years ago at least two-thirds of the student's credit hours were required. This pattern began to break down in the fifties, and by the middle sixties the norm was a required first year of property, torts, civil procedure, contracts, criminal law, and usually a "method" or "writing" or "legal institutions" course or two, and after that, take what you like when you like. The reasons offered by the legal academicians for this were several and varied.

One justification offered was that some students attend law school without intending to practice law in any form, and such students should not be required to take courses which, although professionally important, are outside their field of interest or not consistent with their purpose for being in law school. Certainly law schools have some students of this description, but it should also be borne in mind that the law degree entitles them to take the bar and practice if they change their plans.

Another argument is that the student who elects to take a course will be more highly motivated than one who is required to take the course. There may be something to this, but it has not been apparent to this observer. Certainly the most motivated law students are those in the first year when the courses are required. As discussed below, motivation is a problem in the second and third years when courses are elected by the students.

It has been maintained that the teacher in a required course has a captive audience and thus is not as motivated to perform well as he would be if he had to compete for students. This point may have some merit, but it is my impression that such competition for students is at least as likely to encourage relaxation of standards as to encourage improvement in teacher performance. The teacher whose standing among his professional colleagues is insecure may feel a need to appear popular among the students, and may pursue this

² Cavers, *A Proposal: Legal Education in Two Calendar Years*, 49 A.B.A.J. 475 (1963).

goal by the relaxation of demands upon the students and the giving of high grades.

Another argument is that a course may be important professionally in the abstract, but in the hands of an uninformed or poor teacher it may not be worthwhile, and in such case, there is no reason for making the course required. This is very much the exceptional situation in the better law schools, and consequently it does not justify the elective system; but certainly it behooves a dean to make responsible teaching assignments for every required course.

It is also suggested that specific content of courses is relatively unimportant, and that what really matters is learning how to think like a lawyer. If this were true, then certainly there would be no point in requiring between 80 and 90 semester credit hours for a law degree. Legal reasoning can be mastered in much less time than that. I believe, however, that it is wholly unrealistic to underestimate the importance of exposure to a wide variety of legal subject matter. Obviously the lawyer's learning of subject matter continues throughout his legal career, but the law school serves the function of providing a foundation for further study and learning.

Finally, it is said that most students elect those courses which are professionally important anyway. This is not an argument for the the elective system, but rather an argument that the issue of elective versus required is not very important. What it fails to recognize, however, is that a substantial minority of students obtain law degrees today without having been exposed to systematic and intensive study of important professional material.

Those are the arguments in support of the elective system. Now we turn to the arguments against it. In the adoption of the elective system, the law schools have lost sight of the distinctive nature and purpose of a professional school. The professional school is in the university, but it is very different from the undergraduate liberal arts college. The function of the liberal arts college curriculum is, in the broadest terms, to expose the student to the history of human thought and accomplishment. Obviously the undergraduate college student can be exposed to only bits and pieces of this. He is required to concentrate in a certain area and is normally required to diversify to some extent. Typically he has a wide range of choice both in his area of concentration and in his diversification. Whether his freedom of academic choice is wise or unwise, the degree that he earns does not purport to represent a qualification to engage in a particular calling for pay. If his selection of courses adds up to a

poor exposure to the history of man's ideas and accomplishments, the student and the student alone is the loser. But the consequence of poor course selection in the professional school is quite different. The law school degree is a major factor in the process of certification that an individual is qualified to engage in the practice of law. If he does not obtain adequate exposure to the fundamentals of the law, not only is he the loser, but also those he counsels are likely to suffer. The factors which distinguish the professional school from undergraduate liberal arts should be too obvious to require stating, but it is very clear today that this distinction is not understood or acknowledged by many students and a surprising number of legal academicians.

Although I believe that the rationalizations for the elective program were honestly arrived at by those who supported the change, of which I confess I was one, I believe that there were other reasons, usually unstated, for the adoption of the program. One was the contempt for the undramatic, bread and butter aspects of the law school curriculum. Another was the wish to accommodate the students' desire for greater freedom from institutional control. Overlooked by the faculties were the facts that the bread and butter aspects of the law school curriculum are the principal function of legal education and that the second-year law school student is not qualified to determine the nature and scope of his professional training. In short, the law school faculties lost sight of the fact that they were operating a professional school.

I do not mean to suggest that the elective system has had a catastrophic effect upon legal education, but I do believe that it has weakened it. A majority of students do take the courses necessary to prepare them for practice. The responsible law student who seeks and obtains sound advice continues to take the professionally valuable courses and in the proper sequence. But there is a significant minority which does not do so. Every year law school degrees are awarded to students who have had no exposure, for example, to the Uniform Commercial Code, or to the rules of evidence, or to the principles of corporate finance, or to the principles of property succession, or to the meaning of a balance sheet. This is worse than a mistake; it is irresponsible for the law schools to allow this to occur. Why are there students who avoid professionally important areas of study? The reasons are various: The subject may be considered very difficult; the teacher may be a tough grader or very demanding; the course or the teacher may be considered dull; the teacher may be

considered weak; the subject may not be considered "relevant" to the student's interests or his career plans.

Even among the students who elect the professional courses, it is common for them to take various courses in a sequence which is not pedagogically sound. When 2 years of education, that is, about 60 semester credit hours, are available for choosing, it is easy to take some courses out of order, whether by mistake or because course scheduling conflicts with jobs or with social or family plans.

There is another point which may have validity. What impression does the law student have of a professional curriculum from which he is told, after 1 year of study, that he is free to pick and choose as he wishes? Isn't it just like the good old days when he studied human relations back in college? The professors in the first year of law school keep saying what a demanding and rigorous discipline the law is, but it can't really be true if after 1 year's exposure he takes what interests him, or what will get him the best grades, or what will make the least demands on his time. In this subtle way the elective system may contribute to a negative attitude on the part of the student.

The question may be asked why the bar exam is not an adequate method of seeing to it that the student has an adequate exposure to fundamental professional material in law school. There is no question that it does motivate many students to take the basic courses. Some students are relatively uninfluenced, however, by the demands of the bar; they rely on the bar review course to enable them to squeak by in those areas where they have not received academic instruction. Bear in mind that one may do poorly in certain parts of the bar exam and yet pass. The function of the bar exam in the pluralistic law school world is to establish a minimum standard of professional competence; the function of the good law school is to offer and demand more than the bar exam requires.

What I propose is that the second-year curriculum be required, as it was in many schools 10 or 15 years ago. I believe that, as part of the certification process, the student should be required to have systematic and intensive instruction in federal income, gift and estate taxation, the Uniform Commercial Code, corporate law, accounting, succession law, evidence, conflicts, constitutional law, and one administrative regulatory course. Certainly fault may be found with this choice, but it is the principle rather than the detail which is of significance. The first-year required curriculum of property, torts, civil procedure, criminal law, contracts, and a "method" or "legal

institutions" or "writing" course or two does not represent the essentials of a preparation for the practice of our profession.

It is most relevant to my proposal concerning the elective program that the Ohio Board of Bar Examiners has recently recommended to the Supreme Court of Ohio that each applicant for the bar be required to file a certificate from his law school that he has completed courses of study which have included comprehensive instruction in the subjects which make up the bar examination.† These subjects are business associations, constitutional law, contracts, criminal law, equity, trusts, wills, evidence, negotiable instruments, property, pleading and practice, and torts.

The other aspect of my proposal has to do with the compression of law school training into 2 calendar years. At the present time the law student typically starts his education in September and completes it 33 months later in June. There are 3 months between completion of college and the beginning of law school; there are 3 months off between the first year and the second year, and between the second year and the third year. There are 3 or 4 weeks off during the school year. Of the 156 weeks between graduation from college and graduation from law school, the student is engaged in academic activities a total of about 100 weeks.

Typically the law school semester consists of 15 weeks of instruction and an examination period of about 10 days, making a total for the 3 years of 90 weeks of instruction and 9 weeks of examinations. If law school started on July 15 and ended on August 31, 2 years and 6 weeks later, the same instruction and examination time could be provided and still leave 11 weeks free. In each of the six "semesters" (which shall be called "trimesters" hereafter), there would be a week's vacation, and there would be a week's vacation after each trimester.

This compressed program should present no serious problem with respect to the standards of the accrediting bodies — the American Bar Association and the Association of American Law Schools. Those standards call for 90 weeks of instruction which is maintained in the compressed program. The standards also call for a 3-year academic program for full-time students, but it appears that this has not been construed literally. That is to say, the 3-year requirement has been deemed to mean 3 years or its equivalent, and 90 weeks with the requisite teaching hours has been deemed to satisfy accrediting standards although the student has not been in residence 3 years.

Some schools currently allow acceleration which enables the student to obtain his degree in the middle of his third year.

I believe there are both psychological and financial advantages to this plan. By the time the student reaches his second or third year of law school, he is book-weary after 5 or 6 years of higher education. He is about 24 years old and in most cases married and is itching to be professionally productive. The law school conducts its academic program like undergraduate school, without, it appears, any sense of urgency with respect to his vocational ambitions. All this makes for a restless, and occasionally resentful, law student. The second and third-year blues is not something peculiar to this generation of law students; I recall my experience vividly.

It is clear that a 2-year program, merely because of its brevity, would to a substantial degree ameliorate the psychological problem just described. But I believe that it offers psychological advantages in addition to that of brevity. It would create a sense of purpose and urgency which is currently lacking in the traditional academic calendar which follows essentially the same pattern as the undergraduate school. This is only a guess, but I think that upperclass law students would be more highly motivated with an accelerated academic calendar; in terms of time they would be closer to the profession, and accordingly they would think of themselves more as professionals.

This program would have significant financial advantages for the student. Although his tuition expense for the 2 years would be the same as his tuition expense now is for 3 years, there would be a saving of 1 year's living expenses. In addition, the student would become professionally productive 1 year earlier than he does under the present conventional program. Offsetting these financial advantages is the earning potential of the summers between graduation from college and the first year of law school, and between the first and second years and the second and third years of law school. There would seem to be no doubt, however, that the financial balance weighs heavily in favor of the compressed program.

I think that the allotment of 11 weeks off during the 2-year period is sufficient recuperation time from the strain of legal education. The protracted summer periods which now obtain probably have the effect of blunting the mind unless the student is engaged in some mentally demanding effort during the summer period. Some fortunate students are able to obtain law-related summer employment which aids their perspective as a student and which may be of

value in determining what kind of law practice they wish to engage in when they graduate, and this experience would not be available under the proposed 2-year program. I view this as the principal disadvantage of the proposed program from the student's standpoint.

This plan does not presume that the faculty member would teach more hours than he does at present. Instead of teaching in every semester as under the present calendar, the faculty member would be required to teach in two of the three trimesters during the calendar year. The same amount of teaching time would be involved as under the present system. Staffing the proposed plan should not require a larger faculty than is presently employed. The same number of credit hours would be offered in a calendar year in the 2-year program as are offered in a calendar year in the conventional 3-year program; in the former there would be six trimesters of teaching, and in the latter there are six semesters of teaching. Tuition income would remain the same; the reduction of the number of students in school in a calendar year would be offset by the increased credit hours being paid for by those students in attendance.

If the elective program is reduced to one-third of the law school credit hours from the present two-thirds, it is likely that the volume of electives could be reduced somewhat. This means that the professors would not be spread as thin as they are now. There might be a saving of teacher expense in this respect.

It should be emphasized that the proposed 2-year program would have to be required of all students, particularly if there were a two-thirds required curriculum program. If there were two tracks, one for the compressed program and another for the conventional 3-year program, the teacher expense and administrative difficulties would be very substantial.

So this is my plan to make legal education cheaper, quicker and better: Make at least the first two-thirds of legal education required and compress legal education into about 2 calendar years without reducing coverage. I think the 3-year, 3-summer law school calendar has only the virtue of tradition and is wasteful and harmful to student morale. I think the two-thirds elective system is unprofessional and has made law school education rather sloppy. This broad elective program has also required the expansion of the number of elective offerings, frequently without the kind of quality control which should be employed at the professional school level. It may be that the current fiscal pinch is a blessing in disguise inasmuch as it may

force the law schools in particular and higher education in general to reexamine their purposes and reassess their priorities.

†ADDENDUM

During the week of June 21, 1971, the Supreme Court of Ohio refused to adopt the Ohio Board of Bar Examiners' proposal that each applicant for the bar be certified by his law school to have completed instruction in all of the subjects covered by the bar examination.

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