The Future of Legal Education

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The Future of Legal Education

Robert A. Stein*

The subject of this Essay is the future of legal education. The essay is an adaptation of my inaugural lecture as William S. Pattee Professor of Law,¹ a professorship named after an extraordinary man who served as the first Dean of the University of Minnesota Law School.²

In order to discuss the directions that legal education might

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* Dean and William S. Pattee Professor of Law, University of Minnesota.
1. The William S. Pattee Chair in Law inaugural lecture was delivered on April 20, 1990.
2. Dean William S. Pattee was born in Maine in 1846, and he received his Bachelors Degree from Bowdoin College. He served as a high school principal in Maine, taught Greek at a university in Illinois, and then moved to Minnesota to become Superintendent of Schools in Northfield. Like many lawyers of his generation, Dean Pattee had no formal legal education, but rather studied law as an apprentice in a law office. He practiced law in Northfield, was elected to the State Legislature and was prominently mentioned as a possible nominee for Attorney General or Governor of the State. He accepted the challenge to become Dean of the new Law School at the University of Minnesota in 1888, when he was 42 years old, and that was to consume the major portion of his energies for the remaining 23 years of his life.

Over this period, Dean Pattee nurtured the growth of the new Law School into an outstanding institution of learning. "Starting with only his personal energy, he shepherded the school out of a basement lecture room and into a new building of its own; he expanded enrollments from 67 in his first year to an average of more than 500 during his last ten years; and he laid the organizational foundation, both in course of study and faculty, that would allow for the school's ascendance to academic excellence in succeeding years." R. Stein, In Pursuit of Excellence 35 (1980).

Some 19 years after Dean Pattee's death, Pierce Butler, who was then Associate Justice of the United States Supreme Court, speaking at the dedication of Fraser Hall, said of Dean Pattee: "While lacking in professional training and experience, his capacity for study, great industry, high character, and sense of duty combined to make him as good a man as could then be found for leadership in the new Law School." R. Stein, supra, at 34.

At the University's Charter Day exercises on February 16, 1933, Dean Pattee was designated one of the five " Builders of the Name" in the history of the University.

The occasion was widely publicized in the Minnesota press.

... There was unveiled in the foyer of Northrop Auditorium, engraved in marble on the wall ... Dean Pattee's name with four others. And this 22 years after his death. Only five persons in the
take in the future, it is helpful to reflect briefly on the development of American legal education up to now. Formal legal education in America is now in its third century. The academic study of law dates from 1779, when Thomas Jefferson, then Governor of the Commonwealth of Virginia, established a "Professorship in Law and Police" at William and Mary College and appointed his former teacher, George Wythe, as the first holder of the professorship.3

Throughout the first century of our nation's history, the most common form of legal education was self-education by "reading law" or serving as an apprentice in a lawyer's office. Indeed, the initial challenge facing Dean Pattee, after this Law School was established in 1888, was to convince the public that a law degree really was of benefit and that the organized and systematic approach offered by a law school was necessary, or at least highly advantageous, to those wishing to become a law-

To this end, the School's first six catalogues began with the following statement from an American Bar Association Report on legal education:

There is little, if any, dispute now as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantage, the verdict of the best informed is in favor of the schools.\(^5\)

In an 1890 article, Dean Pattee advanced a more direct attack on legal education through apprenticeships:

The one thing needful the student does not possess, and can never thoroughly acquire in the average office, — discipline of mind. And a systematic knowledge of the law does not come by chance, nor by easy and unregulated efforts. The distractions of a busy office are utterly incompatible with the quiet required for study and contemplation on the part of the student; and the quiet of an empty office is equally incompatible with the legal enthusiasm on the part of the practitioner. The busy office distracts the pupil; the empty office distracts the teacher.\(^6\)

By the close of the nineteenth century, this debate was largely resolved, with the consensus in Minnesota and in other states that academic training in a law school was the preferable means of obtaining a legal education. In Minnesota, Dean Pattee was aided in winning this debate by persuading the Minnesota Legislature in 1889 to pass a statute exempting graduates of the University of Minnesota Law School from taking the bar examination required of other applicants.\(^7\) This exemption was continued for over twenty years.\(^8\)

Those students who studied law in a law school during the first century of legal education in the United States received a very broad education. The prevailing view concerning legal education in an academic setting was that it should include study of government generally and be of importance to students not intending to be lawyers as well as to future practitioners. In Virginia, George Wythe set the course early by offering a model of legal education in which all three branches of the newly established government were studied, not just the judicial branch. Wythe's objective was "to provide training for citizenship and

\(^4\) R. STEIN, supra note 2, at 8.

\(^5\) E.g., University of Minnesota Dep't of Law Circular of Information, 1889-1890, at 3-4 (quoting Committee on Legal Education and Admission to the Bar, Report, 2 A.B.A. REP. 209, 216 (1879)).

\(^6\) Pattee, Law School of the University of Minnesota, in 2 GREEN BAG 203, 211 (1890).

\(^7\) R. STEIN, supra note 2, at 9.

\(^8\) Id.
public service as well as for the private practice of law."

Law schools in the United States generally followed Wythe's model of academic law study throughout the first century of American legal education. An 1870 report in the *American Law Review* quoted the President of Northwestern University in a letter to his Board of Trustees:

> The object of a law department is not precisely and only to educate young men [and women] to be practicing lawyers, though it will be largely used for that purpose. It is to furnish all students who desire it the same facilities to investigate the science of human law, theoretically, historically, and thoroughly, as they have to investigate mathematics, natural sciences, or any other branch of thought.

The year of that Report, 1870, is significant; 1870 is the year that Christopher Columbus Langdell became the first Dean of the Harvard Law School and introduced there the "case method" of law study, an innovation generally viewed as "the most significant event in the evolution of American legal education." The case method, when combined with the socratic teaching technique, used written judicial opinions, usually in appellate cases, not only to teach substantive principles of law, but also to teach legal reasoning skills. The socratic case method has been described as shifting the focus from "substance to process; from an inductive search for a system of legal principles to a honing of certain professional skills, from what judges said to what judges should have said, from a dogmatic teaching tradition to a critical one."

Some critics contend that the case method narrowed the focus of legal education in its second century as compared with the broader focus of the first century. In the words of one critic:

> Law Schools in the United States, in short, are not 'law schools' at all but 'lawyer schools,' whose curricula are heavily weighted in the direction of providing basic analytic skills training for those who intend to engage in the private practice of law and, more specifically, to represent private interests before judicial tribunals.

Changes occurring in American higher education in the latter half of the nineteenth century also shaped this move to a narrower professional model of legal education. Jacksonian democracy had produced a reaction against classical studies in

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10. 5 AM. L. REV. 177, 177 (1870-71).
11. A. HARN, LEGAL EDUCATION IN THE UNITED STATES 59 (1953).
13. Id. at 598.
favor of more practical vocational education.\textsuperscript{14} The enactment of the Morrill Act established the endowment for the nation’s land grant universities, the greatest of which were the great state universities in the midwest, including the University of Minnesota, where legal education experienced explosive growth during the latter decades of the nineteenth century.\textsuperscript{15}

This professional model of American legal education differs greatly from the model of legal education in continental Europe. As one comparative law commentator has summarized: “[L]egal education in the civil law world is, at bottom, general education, not professional education. . . . Law is merely one of the curricula available to undergraduate students. . . . [T]he professional side is taken care of after the university.”\textsuperscript{16}

The professional model of American legal education, using the case method and socratic teaching technique, in effect during the past century, has been widely praised. Not coincidentally, the debate about the relative merits of law study in a law school versus apprenticeship in a law office was quickly resolved in favor of law schools shortly after the case method was introduced. Many believed that American legal education has prepared students for professional practice more effectively than academic training for any other profession or in any other country. As a result, legal education has enjoyed a close and supportive relationship with the practicing profession. Albert Harno, in his important 1953 book entitled, Legal Education in the United States, hailed the case method as “a system of instruction which in the hands of an able and skillful teacher is unexcelled as an instrument of education.”\textsuperscript{17}

Despite its acclaim, the case method is a narrower model of education than the broader model employed in universities during the first century of academic legal education in the United States. Thus, after praising the case method, Professor Harno goes on to write: “But Langdell also is responsible more than any other man for confining legal education in a strait mold which was for years to dissociate it from the living context of the world about it.”\textsuperscript{18}

\textsuperscript{14} Id. at 644-45.
\textsuperscript{15} Id. at 645.
\textsuperscript{16} Merryman, Legal Education There and Here: A Comparison, 27 STAN. L. REV. 859, 865-66 (1975).
\textsuperscript{17} A. HARNO, supra note 11, at 59.
\textsuperscript{18} Id.
In an influential 1921 report written for the Carnegie Foundation for the Advancement of Teaching, entitled "Training for the Public Profession of the Law," Alfred Reed wrote a very insightful criticism of the case method of instruction:

[Although any method of teaching presupposes, for its successful operation, an efficient corps of teachers, this condition is peculiarly necessary when the student's ultimate guide is a [teacher] and not a book. I believe that while, in the hands of a genuine scholar, skilled in the Socratic method, the case method is indubitably the best, in the hands of a mediocre [teacher] it is the very worst of all possible modes of instruction.]

This contrast between the broad and narrow models of legal education will be noted again later in this essay.

Some critics contend that legal education has not changed much since Dean Langdell introduced the case method over a century ago. These critics argue that law schools today continue to have about the same required first-year curriculum, continue to utilize the socratic method of case analysis, continue to cram large numbers of students into a classroom for instruction producing student-teacher ratios astonishingly high as compared with any other graduate program in the university, and continue to use a grading system that assigns to up to half the class a grade of C (or less) unlike any other graduate program in the university. Some of these critics further contend that the creation and development of the accreditation processes of the American Bar Association and the Association of American Law Schools have contributed to this problem, because these processes have had the effect of homogenizing American legal education and transforming it "into a 'nondynamic industry, slow to change and short on innovation.'"

I do not agree with the contention that legal education has not changed significantly throughout the twentieth century. In fact, a development that is, perhaps, the second most significant development in American legal education has occurred primarily in the past twenty years. This development is the integration of clinical education into the law school program. Clinical education, involving actual or simulated client situations, pro-

20. See infra Predictions 1 and 2.
vides the student with a laboratory in which to apply the principles learned in the traditional classroom courses.

Further, and contrary to the critics' assertions, the law school curriculum has changed enormously over the past several decades. The modern curriculum includes numerous courses that have developed as new bodies of law have emerged — environmental law, employment discrimination, consumer protection, international transactions, bioethics, immigration law, and computer applications in law, are courses commonly offered in most law schools today that were not offered at any law school only a few years ago. Indeed, the University of Minnesota Law School offered a seminar on the law of Antarctica recently, providing a comparative law examination of the law treaty proposed to the multi-nation consortium asserting sovereignty over the Antarctic continent.

Even some of the course titles that have not changed over the years today designate markedly different material from what the same title meant several decades earlier. New wine is being poured into these old vessels. For example, the subject of property, a required course at virtually every law school in the United States, has been a fixture in the curriculum throughout the past century. Today's property courses bear scant resemblance to that offered to law students a generation or two ago. A contemporary property course includes such subjects as landlord and tenant law reforms, housing problems, zoning, condominium law, solar easements, eminent domain and other public limitations on private ownership rights — all subjects that were not included in the property course decades ago, which then emphasized estates in land, conveyancing and riparian rights.

The various "movements" in legal scholarship throughout the twentieth century have also left their mark on law school curricula. The legal realism scholars viewed law as an instrument to achieve social objectives, which should be evaluated in terms of its success in achieving those goals. This movement inspired law faculties, first at Columbia in the twenties and later at other law schools, to organize law school courses "in terms of the areas of social life affected by the law rather than in terms of abstract legal doctrine and . . . [to draw] on non-legal materials in order to understand the social structure in which the law operates."22 The law and social science movement, which evolved initially at Yale and later spread to other law schools, inspired a number of empirical studies that have

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22. Id. at 654.
affected law school curricula in various substantive and methodological ways.\textsuperscript{23}

More recently, the law and economic analysis scholarship, initially concentrated at the University of Chicago Law School, has heavily influenced the subject matter of several courses in the curriculum, beginning with the first-year course in torts.\textsuperscript{24} Even more recently, the critical legal studies movement, primarily centered at the Harvard Law School, has questioned the values advanced by legal doctrine and is again affecting the manner in which some law school courses are organized and taught.\textsuperscript{25}

The late eighties saw the emergence of several new schools of scholarship that are already beginning to have a curricular impact. I am pleased that two of these important new movements — the public choice school of scholarship, and feminist scholarship — have a strong connection with scholars at the University of Minnesota Law School.\textsuperscript{26}

I could give further examples, but I believe the record is clear. Legal education has continued to evolve and develop throughout the twentieth century. And, rather than inhibiting change, I believe the accreditation processes of the American Bar Association and Association of American Law Schools have contributed importantly to improvement in the quality of legal education by mandating needed changes at law schools that were lagging behind.

But where do we go from here? What can we say about legal education in the future? I have been particularly interested in this subject for some time. To the extent we can anticipate the direction legal education will take, we can position our law schools to take maximum advantage of the opportunities that will be presented. Let us look into our crystal balls.


\textsuperscript{25} See Burton, supra note 23, at 780; Minda, supra note 24, at 614.

\textsuperscript{26} See, e.g., D. Farber & P. Frickey, \textit{Law AND PUBLIC CHOICE: A CRITICAL INTRODUCTION} (1991); Sherry, \textit{Civic Virtue and the Feminine Voice in Constitutional Adjudication}, 72 Va. L. Rev. 543 (1986); see generally Minda, supra note 24, at 599-601. Professors Daniel A. Farber, Philip P. Frickey and Suzanna Sherry all teach at the University of Minnesota Law School.
and attempt to identify various developments or trends that will occur in legal education over the next decade. What will legal education be like as it enters the twenty-first century?

Occasionally, a crystal ball can become a little cloudy. I believe it was the great American philosopher, Yogi Berra, who said, "making predictions is difficult, especially about the future." Consequently, I recently wrote to all of the nation's law school deans and asked them to identify five developments that they would anticipate for legal education over the next decade. The deans were asked to think broadly and to make predictions, whether in the areas of "curricular developments, pedagogical change, technological advancements, changes in the supply and demand of students or teachers, or developments in the profession that have educational implications."27

The response was overwhelming. Eighty deans responded, including the deans of most of the leading law schools in the country. Although the ideas that follow are my own, and I take responsibility for the inaccuracy of any of the predictions, there was substantial support from the deans for many of the developments I discuss.

In order to provide you with a score card by which to keep track of these forecasts, I will identify twenty-three predictions of developments in legal education over the next decade. The reader may be inclined to ask why the number twenty-three. I have no particular reason, except that there must be some limit to the length of this Essay. And twenty-three was the number of years William Pattee served as Dean of the Law School. So, I hope this format will help you to remember the extent of Dean Pattee's great service to the Law School. (Aren't you glad he didn't serve for forty-five years?)

PREDICTION NUMBER 1

The conflict between the broader academic discipline model of legal education and the narrower professional model, previously discussed,28 will continue and, indeed, intensify in the years immediately ahead.

Legal scholars and scholars in related disciplines increasingly are examining broader issues of ethics and social justice and reconceptualizing entire areas of doctrinal development. This form of scholarship contrasts markedly with articles that

28. See supra text accompanying notes 9 and 13.
attempt to organize and explain governing authorities in a particular subject area in order to set forth for the practicing lawyer the current state of the law. I have observed a remarkable growth in the broader form of scholarship in just the past twenty-five years in which I have been involved in legal education. Indeed, the overall scholarship expectations for law teachers have grown substantially over this period. As a result, many law school deans responding to my questionnaire anticipate a widening gap between academic lawyers on law school faculties and members of the practicing profession. One responding dean described this development as a “growing disjunction between legal scholarship and the legal profession, or in any real sense, exploration of our legal institutions.”

At the same time this development is occurring, the practicing profession is demanding that law schools do a better job of preparing graduates for the practice of law. Critics of no less stature than the former Chief Justice of the United States Supreme Court, Warren Burger, have assailed law schools for doing an inadequate job of training law graduates in trial advocacy skills.29

The remarkable growth in clinical education over the past twenty years, described earlier,30 and other trial advocacy instruction have done a superb job of teaching trial advocacy skills, in my opinion. I believe law school graduates today are better prepared to try cases upon graduation from law school than ever before in our history. But this is not enough.

**Prediction Number 2**

I anticipate a substantial further growth in instruction in lawyering skills in the decade ahead.

Law schools are broadening their skills training beyond trial advocacy programs to include instruction in other lawyering skills such as negotiation, counselling and writing. Clinical education — novel in the 1970s — has become mainstreamed today. Such instruction is, of course, labor intensive and will have large cost implications. The traditional law school student-teacher ratio of twenty to one will not permit expanded lawyering skills training. This development will place added pressure on the necessity for technological advances for streamlining instruction in other areas — about which I will say more

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30. See text following note 21 (regarding the introduction of clinical education into law school curriculum).
shortly. A principal reason why the legal profession expects the law schools to do a better job of teaching lawyering skills is that the enormous increase in the number of law school graduates means a large percentage of graduates will not be able to develop these skills in an apprentice-like system as an associate in a mega-size law firm.

In short, law schools in the decade ahead will be pulled in opposite directions — attempting to more effectively develop the broader model of academic law study, while strengthening the professional training of law graduates who will enter the practicing profession. Viewed another way, this conflict is caused by the need to prepare law graduates for the many and varied careers they may pursue.

This schizophrenia in the law school mission will have implications for faculty staffing. Some of the responding deans specifically predicted greater use of adjunct faculty to teach lawyering skills, possibly in team teaching arrangements with permanent faculty. In any event, faculty with a variety of skills will clearly be needed to carry out these diverse missions of law schools in the decade ahead. This leads to the next prediction.

Prediction Number 3

Professional status issues will intensify over the next decade between the various categories of faculty — tenure-track, clinical, adjunct, writing instructors, interdisciplinary appointments, and librarians.

Even within the traditional tenure-track faculties, increased attention will be given to the relative value of the contributions of the talented teachers and the productive scholars. The challenge for law schools will be to integrate all of these groups into one harmonious whole in which each group respects and is aided by the contributions of the others.

Before addressing the curricular changes likely to occur in the decade ahead, a few words are in order about the size and composition of the law school student body in the years ahead.

Prediction Number 4

The demand for legal education will level off and probably decrease slightly from the extraordinary level that has characterized the past twenty years.

The past twenty years have been remarkable in legal education. In the academic year 1968-69, there were 138 ABA approved law schools in the nation, having a combined enrollment
of over 59,000 law students. Nearly 18,000 new lawyers were admitted to the bar in 1969, and the number of lawyers in the country totalled approximately 350,000. Last year, academic year 1989-90, there were 175 ABA approved law schools (a 27% increase) enrolling almost 130,000 students (more than double the number twenty years earlier). Over 46,000 new lawyers were admitted to the bar in 1989, an astonishing 2-1/2 times more than the 18,000 new admits in 1969. The total number of lawyers nationwide is now over 700,000, again doubling the figure twenty years earlier. At the present rate of increase, there will be more than one million lawyers in the country by the year 2000. This is a number one could not have thought possible even a few years ago. America leads the world in the number of lawyers per capita.

Several factors may be responsible for the explosion in the demand for legal education. The large increase in women into the profession is certainly a factor. Women now represent 42% of the total law school enrollment in the country. Also, enrollment has increased as a result of the addition of large numbers of students from under-represented minority groups. Further, the legal profession has figured prominently in the news in the 1970s and 1980s — from Watergate to the Iran-contra hearings — and this media attention has undoubtedly affected career choices. Even the glamorous sex-filled lives of lawyers as portrayed on the popular television drama L.A. Law has been cited as a factor.

The bloom may soon come off the rose. Most of the law school deans who offered an opinion on the subject felt that demand for legal education would level off or decline in the next decade. Some deans felt that this would be due to declining

32. Id.
35. Id.
37. Id.
40. See infra note 43 and accompanying text.
placement opportunities; another felt that it would be caused by a greater awareness of lawyer dissatisfaction with the stress and the changing nature of the practice of law. Another simply said, “[w]e are currently atop an application bubble that has to burst.”

A contrary minority view was expressed by some deans who anticipated a continuing increase in applications. One explained: “Law school offers a service-oriented degree in an increasingly service-oriented economy.”

**Prediction Number 5**

There will be even greater diversity in our law school student bodies and faculties in the decade ahead.

Already men and women are nearly equally represented in our student bodies. As previously noted, currently 42% of the nation’s law students are women. At the University of Minnesota Law School that figure is 47% in the current first-year class. I anticipate that before long, approximately the same percentage of our faculties will be women, although this figure is lagging behind the student percentages. At Minnesota, currently 24% of our faculty are women, although 45% of our faculty appointed since 1980 are women.

One dean responding to my letter predicted that law would become a predominantly female profession in the years ahead, but I do not expect that to happen. In light of the opportunities law provides for government, civic, corporate and professional leadership, I expect law will continue to be an attractive career choice for both sexes.

Less progress has occurred in diversifying our law schools and the legal profession with increased numbers of racial minorities. However, I believe that we are making progress, and that recruitment efforts over the past few years are bearing fruit. In the current academic year, 13% of the nation’s law students are students of color. The number of minority law students nationally has increased 50% over the past ten years from roughly 10,000 in 1980 to 15,700 in 1989. The percentages

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43. Memorandum No. QS8990-43 to Deans of ABA Approved Law Schools, from the Office of the Consultant to Legal Education (Feb. 6, 1990).

44. Id.
are slightly lower for minority faculty members, but are growing. In 1989, 10% of the full-time law faculty members in the country were members of racial minorities. I am confident that percentage will grow and that our faculties will include increasing numbers of people of color.

Prediction Number 6

The greater diversity that will exist in law schools and in the legal profession will have an effect on the law school curriculum and the development of substantive law.

This will be due to the expressions of values and concerns by previously under-represented groups. I anticipate that a more diverse faculty will result in increased attention to the legal status and concerns of the gay and lesbian communities as well.

Prediction Number 7

The greater number of women on law school faculties and in the profession will cause law schools and law firms to more realistically address such issues as child care, family responsibilities, and more flexible work arrangements. These actions are long overdue.

There will be several developments in the educational program of law schools over the next decade, in addition to the likely expansion and strengthening of lawyering skills training in the curriculum discussed earlier. These developments are the subject of the next seven predictions.

Prediction Number 8

There will be a substantial internationalization of the curriculum, a change that I believe will be the major curricular development over the next decade.

Increasingly, we must prepare students for a global practice. Today, events in far away places frequently affect the practice of law in the United States. For example, the unification of the European Community in 1992 will have major implications for law practice in the United States.


46. See supra text following note 21 (describing integration of clinical education into law school curriculum).
Even for graduates who will have no international aspects to their practice, a comparative law experience is valuable in order to see how another culture and system of law would address a similar problem. I hope that by the year 2000, every law student will have an international or comparative law dimension to his or her legal education. Many deans shared my conviction that this curricular change is imminent and important; in fact, only expanded lawyering skills training was predicted by a greater number of the deans.

**Prediction Number 9**

The law school curriculum in the future will offer far more specialized courses and seminars, and some law schools will offer specialization tracks.

This development is a reaction to the ever-increasing specialization in the practice of law. Like the previous prediction, many deans predicted this change. In fact, some deans predict that law schools will become involved with formal post-J.D. specialty education and certification.

I believe the expense involved in faculty development of multiple areas of expertise to staff several specialty tracks will limit the success of the efforts to experiment with such tracks. A more modest development, that I expect to occur, will be the growth of certain areas of concentration within the curriculum, in which students will be able to take clusters of courses relating to a particular subject area.

**Prediction Number 10**

There will be increased attention in law schools to ethical issues, mirroring an increased concern about ethical conduct by the bar as a whole.

The standards of accreditation of American law schools require that every law student receive instruction in professional ethics.\(^47\) Repeatedly, bar task forces have called upon law schools to provide more effective instruction in ethical issues.\(^48\)


I believe that law schools will attempt to respond to this call, but the challenge will be, in the words of several dean respondents, “to more effectively integrate ethics and professional responsibility throughout the curriculum.” Traditionally, the Legal Ethics course has not been a successful or popular offering at most law schools. Students often do not understand the context in which the challenging, difficult and interesting ethical issues arise. One law school dean, reporting on several years of study by her faculty on the question, predicted: “Continuing experimentation [with ethics instruction], with some serious attempts at evaluation, resulting finally in a set of options adapted to different kinds of law school settings, each of which has been demonstrated to have, on some measure or other, some success.” The dean went on to predict the “flourishing of programs like Inns of Court that bring law students and law faculty together with judges and practitioners in ways that give real content to the abstract notion of ‘high professional standards.’”

Prediction Number 11

Somewhat related to the greater attention to ethical issues will be increased efforts to address questions of “professionalism” — the practice of law as a public service — in the curriculum.

One responding dean explained the issue in the following way:

I think in the next 10-15 years “professionalism” issues will be forced on legal education like skills training was 10-15 years ago. This will result from the increasing breakdown of professional behavior by lawyers. The bar refers to this issue as “civility.” ... As the legal profession becomes more commercial, more economics-driven and less dedicated to public service, law schools will begin to try to teach or indoctrinate students with “public” virtues.

I do not believe law schools will experience much success in these efforts. The economic forces that are reshaping our profession are powerful, and I hear more comments from members of the bench and bar about “declining professionalism” than I do about any other subject. Whatever the success, law schools will respond to the challenge to try to more effectively instill in students the value of the practice of law as a public service.

Prediction Number 12

The law school curriculum will increasingly emphasize
non-litigation strategies, or alternative dispute resolution (ADR).

Several deans saw this increased emphasis as a likely curricular development, and one described it as: "Pervasive infusion of ADR into the curriculum." Some more effective alternative procedures for resolving disputes must be found to reduce the soaring costs and years of delay caused by "no-holds-barred" litigation. The legal profession must take the lead in this endeavor or our profession will become increasingly irrelevant to conflict resolution in American business. Already commercial arbitration is overwhelmingly the more common form of dispute resolution in international transactions. By "infusing" our curriculum with alternative dispute resolution ideas, American law schools can play an important role, indeed a leading role, in addressing the problems caused by the litigation explosion in our nation.

**Prediction Number 13**

American law schools will expand their interdisciplinary courses, studies, research and appointments.

This development will assist law schools in carrying out both their broader academic discipline mission and their narrower professional training mission. The deans noting this development believed it would be due both to the appointment of more intellectually diverse scholars to law school faculties and to the establishment of interdisciplinary bridges by joint appointments of faculty with other departments.

I have observed that for the past couple of decades, law schools have frequently attempted to introduce interdisciplinary expertise by making law school appointments of faculty members with training in another discipline as well as law. In many cases, these appointments were not optimally successful because the faculty member, holding his or her entire appointment in the law school, became less and less involved in the other discipline over the years. More recently, the University of Minnesota Law School and other law schools are attempting to appoint multi-disciplinary faculty who will maintain active research programs in both disciplines by entering into joint ap-

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pointments with another University department. Bureaucratic obstacles to such joint appointments, however, can be enormous and, at times, almost insurmountable.

**Prediction Number 14**

In addition to these various curricular developments in pre-J.D. education, law schools will become more involved in continuing legal education.

In light of the ever-increasing specialization in the practice of law, legal education must be a continuing, life-long experience for members of the bar. More and more jurisdictions will adopt a mandatory continuing legal education requirement. Minnesota was the first state to adopt such a requirement and has now had fifteen years of experience with the rule.50 I believe the bench and bar is pleased with the results.

Although bar associations and other providers will be heavily involved in continuing legal education, law schools are uniquely equipped to bring expertise in instruction to these courses. I hope that law schools will not let this opportunity pass.

In addition to curricular and mission changes, great strides will be made in pedagogical development in legal education in the decade ahead.

**Prediction Number 15**

Rapid developments in technology will continue to affect the teaching and practice of law.

Overall, the law school deans most frequently predicted this development. In many cases, it was expressed in very general terms, such as “expanded use of computerized legal instruction,” or “ubiquitous presence of computers throughout the law school.” One dean simply said, “more machines.”

Already computer-assisted legal instruction is used in 125 of the nation’s law schools.51 The Center for Computer-Assisted Legal Instruction (CALI), which was jointly established by the University of Minnesota Law School and the Harvard


Law School to encourage the development of computer-assisted legal instruction, has its offices in the University of Minnesota Law School. To demonstrate the explosive growth of this teaching technology, in 1982-83 CALI distributed twenty-three computer-based exercises to nineteen member law schools. This year, seven years later, CALI distributed sixty-nine exercises to 125 member law schools. An estimated 60,000 plus law students in the United States will access one or more of these exercises this year! The programmed learning made possible by these computer exercises introduces efficiencies in individualized instruction that will free up class time for more discussion of policy rationales and alternatives.

Undoubtedly, further technological development in legal education will take many forms, including increased use of computers to teach legal drafting and other lawyering skills; student research and word processing work stations; greater access to law-related research materials; the ability to access material in any law library or university library in the country via a desk-top computer in one's office; interactive computer/video exercises; and students or lecturers at remote locations connected via electronic, interactive means. Furthermore, networks of scholars and practitioners working in common specialty areas and joined by computers will immediately share knowledge about the use and success of novel legal theories and procedures, vastly increasing the pace of change in the law.

PREDICTION NUMBER 16

Closely related to expansion of technology in legal instruction, will be the further computerization of the law library. Clearly, computerized research will continue to evolve past Westlaw and Lexis to CD-ROM memory and beyond.

Many of the responding deans felt this would be the area of greatest change, but they were very uncertain what those changes would be. One dean wrote: "I have no conception of the nature of the change. I just know there will be major change." Another wrote: "Will the law library as we have known it for centuries become obsolete with the coming of the computer techniques which will search for and print the needed materials for students sitting at a terminal?" And another frustrated dean wrote:

52. Id.
53. Id.
I wish I could predict what all those changes [in the way law library
services are delivered] will be at this time. I have asked a number of
librarians what changes they foresee and the principal answer I re-
ceive is: "We are still going to have books." There is no doubt they
are correct but that does not really answer the question asked. If you
address this issue in your lecture, I will look forward to reading your
solution.

Professor Harry S. Martin, Director of Harvard Law
School's Law Library, recently wrote the best description of the
law library of the future that I have read.54 In responding to a
question about the future of the law library, Professor Martin
answered by quoting what Mark Twain said on a similar occa-
sion: "I was gratified to be able to answer promptly, and I did.
I said I didn't know."55 Professor Martin then proceeded to de-
scribe an exciting vision of what the future law library might
be like based upon imminent technological breakthroughs.56

I think the reason answers are so hard to find in this area
is that no one really knows what the law library of the twenty-
first century will be like. I believe the changes will be even
more profound than can be imagined now, and that hard copy
volumes are likely to disappear, at least in the area of serials.
The electronic library will also greatly affect research tech-
niques and permit scholarship opportunities previously
unimaginable.

None of the deans expect this technology to reduce the law
library budget. The deans are worried about the costs increas-
ing, including the costs of changeover and the need to establish
reserves for the new equipment. One wrote: "As we become
more and more dependent on the vendors of computerized
knowledge, to what extent do we open ourselves up to escalat-
ing prices and increasing leverage over which we shall have no
control (similar to the 15-20% increase per year for serials, but
perhaps even worse)?"

Many of these changes will involve significant cost in-
creases: expansion of technology, library computerization, ex-
expanded training in lawyering skills requiring lower student-
teacher ratios, and a sharp escalation in faculty salaries caused
by the substantial increase in associate compensation at large

54. H. Martin, From Ownership to Access: Standards of Quality for the
Law Library of Tomorrow, reprinted in UNIVERSITY OF MINNESOTA LAW
SCHOOL, CENTENNIAL CELEBRATION REMARKS 45 (October 6-9, 1988) (The Law
Library Centennial Lecture) (available in University of Minnesota Law School
Library).
55. Id. at 45 (quoting M. TWAIN, LIFE ON THE MISSISSIPPI (1883)).
56. Id. at 46-63.
law firms from which many of the brightest and best lawyers are recruited for law teaching. At the same time as the costs of legal education will be increasing rapidly, many deans worry that funding for higher education generally will be decreasing. This trend will cause a severe financial squeeze for the law schools to which the unfortunate consequences are fairly easy to predict.

**Prediction Number 17**

Tuition for legal education will increase steeply in the decade ahead. This large increase will occur in public and private law schools alike, although the tuition will be much higher in the private institutions.

Law schools may attempt to justify this sharp increase in tuition by pointing to the large salaries offered by the mega-size law firms to new associates. Of course, only a small minority of law graduates will have an opportunity for those high-paying jobs and some of them will not want the accompanying lifestyle.

Students paying $5,000 to $20,000 a year in tuition will be graduating with up to $60,000 to $70,000 of law school debt. For many, the law school debt will be in addition to tens of thousands of dollars of debt accumulated during their undergraduate education. The increased debt load is a serious problem that law schools must begin to address immediately through the development of alternative methods of funding legal education.

Several of the responding deans were concerned about the impact of this cost increase on the commitment of students to their law studies. Deans expect further pressure on students to clerk for a law firm during law school and to focus on placement concerns, thereby diverting their attention from the classroom. In the words of one dean, “I am concerned about what this will mean for the quality of education law students will seek and receive — will their orientation become vocational and not learned?”

**Prediction Number 18**

Loan forgiveness will become a principal form of financial aid.

Many of the forgiveness programs will be tied to career choices made by law graduates, such as acceptance of a low-paying public interest position. As one dean expressed it, if it be-
comes the norm for "graduates [to emerge] with staggering debt burdens, we can expect law as a business, rather than a profession, to drive our graduates. What hope then of motivating them to think of public interest careers?"

In addition to raising tuition, law schools will be under extreme financial pressure to reduce costs whenever possible.

**Prediction Number 19**

Some modest progress at resource-sharing between law schools will occur.

This proposal has long been advocated but has been slow to be adopted. The most obvious example of resource sharing between law schools in a particular region is law library cooperation. One school would emphasize one aspect of a collection while another school would concentrate in a different area. A richer research collection would be available to the faculty and students at both law schools than either school could provide individually with redundant acquisition policies.

Another area where resource sharing might be employed is in sharing a faculty appointment. As the legal practice specialties multiply, law schools will find it difficult to appoint faculty with expertise in all of the specialties that should be represented in the curriculum. By cooperating on appointments, law schools in a region will be able to expand the areas of subject matter expertise on their faculties — enriching the curriculum and providing additional resources for other faculty to consult in their research activities.

**Prediction Number 20**

Another response by law schools to the severe financial squeeze in the decade ahead will be an even greater emphasis on fundraising and reliance on private funding. Many of the deans saw a dramatically increased role for the law school dean in fundraising.

All law schools, public as well as private, will rely more heavily on private support. At the University of Minnesota Law School, private support has increased from approximately $100,000 per year in the 1970s to over $3,000,000 in private gifts in our centennial year of 1988. Although the gifts in 1988 were unusually large because of several endowment gifts to the centennial fundraising campaign, the level of annual giving to this Law School has now stabilized at an amount in excess of $1
million per year. Privately contributed funds now account for almost 20% of the budget at this public university law school.

Law schools are already doing a fairly effective job of fundraising from alumni and the bar generally, in my opinion. In a number of law schools, over one-third of the graduates contribute to an annual fund — a percentage that I believe to be much higher than for graduates in other disciplines.\(^5\) An area of fundraising in which law schools can further improve significantly is in foundation support for legal education. As law schools advance the broader model of academic mission described earlier,\(^6\) foundation financial support for legal education will increase. In addition, I expect to see an increase in sponsored research by law faculty as their research agendas expand beyond a narrower doctrinal focus.

The distinction between public and private law schools will become increasingly blurred as both rely more heavily on private fundraising. At the same time, private as well as public schools will increasingly benefit from government grants and financial aid programs for their students.

**Prediction Number 21**

Law schools will increasingly attempt to develop a particular identity or niche in the legal education market.

As traditional distinctions between law schools blur and demand for legal education drops off, law schools will find it necessary to focus attention on developing an identity which will set them apart and provide a reason to attend their particular school. Schools will become more market-oriented and will seek to develop a niche, a particular segment of the market to which a school might have special attractiveness. These niches might be based on a particular curricular emphasis at a school, on a type of pedagogy employed, or on a schedule to meet the needs of a particular segment of the market. The extent to which a school is able to establish such a market identity may make the difference between a successful or unsuccessful program in an era of increasingly homogenized law schools.

Some developments external to the law schools will also affect legal education in the decade ahead.

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Bar examinations will change greatly and may include performance testing and additional pre-examination requirements. This trend will have the unfortunate effect of greater regulation of law school training by boards of bar examiners. Some regulations of this type have already been implemented in the past decade. More sweeping proposals are currently pending in California, reflecting a significant interest by some segments of the bar to exercise more control over legal education.

The possible changes in bar admission requirements include a wide range of proposals. At the more modest end of the spectrum are the addition of more subjects to the bar exam, a requirement that will have the effect of making more courses effectively "required" in the law school curriculum. Students will therefore have less time to take seminars and advanced courses in newly emerging areas of the law and legal philosophy offerings.

New forms of bar examination, such as the "performance testing" recently introduced in California, will have a greater influence on legal education. These new forms of examination attempt to test skills and abilities other than the legal reasoning skills traditionally taught and tested in law schools. As a consequence, in some places where these new forms of examination have been employed the bar passage results have shown

59. A "performance testing" section, developed in the early 1980s and designed to measure practical legal skills by requiring an examinee to analyze legal problems from a client file and write memoranda similar to those required of practicing attorneys, was added to the California bar exam in 1985. See California Bar Examination (1985-90); Smith, Preparing and Grading the California Performance Test, 53 B. EXAMINER, Feb. 1984, at 16.

60. The Board of Governors of the California State Bar recently voted to impose a requirement for "litigation training" as a requisite to sitting for the California bar exam. Further, a report to this recommendation suggests that the training be conducted by CLE providers rather than law schools. See Board Action — Proposal Adds 'Lawyering Skills' to Bar Exam, 8 CAL. LAW., Aug. 1988, at 84; The Committee of Bar Examiners of the State Bar of California, Special Committee Report, Requiring Attorney Applicants to Possess Minimum Courtroom or Trial Skills (September 26, 1987).

Further, starting with the July, 1992 bar examination, California will add a California multiple-choice test covering torts, contracts, criminal law, evidence, real property and constitutional law. See Notice to Law Schools, Bar Review Courses, Board of Governors, and General Public, from the Committee of Bar Examiners of the State Bar of California (June 20, 1990).

61. See supra note 59.
little resemblance to a student's performance in law school.\^62 Obviously, the expanded use of alternative forms of bar examination will require law schools to reconsider and reevaluate the objectives of legal education and the methods of examination employed.

Various recent proposals for additional pre-examination requirements would have still greater impact on legal education. These proposals have included, for example, a semester of "full-time clinical education" under the direction of faculty required to meet certain practice experience qualifications, a required practice internship, and a fourth year of legal education.\^63 The American Bar Association Section of Legal Education and Admissions to the Bar and the Association of American Law Schools, among others, have vigorously opposed the recent California proposals for additional bar admission requirements, but the proposals are an indication of the changes likely to be proposed in this area. And, finally;

**Prediction Number 23**

There will be a "greying" of law faculties in the decade ahead caused by the elimination of the mandatory retirement rules and the relatively little expansion in new faculty positions.

Law schools will find it difficult to add fresh blood, new ideas, and new energy to their faculties. Federal law already on the books will eliminate mandatory retirement rules for tenured professors after 1993.\^64 Furthermore, in the new decade, relatively few law professors will be reaching an age where they will consider retirement because of the relatively younger average age of law professors. The large number of faculty hired during the great expansion of legal education and law teaching positions in the 1970s and 1980s will not retire until well into the twenty-first century. As previously discussed, financial limitations will also make it difficult to add new positions over the next decade.\^65 Consequently, law faculties will be very static.

This development will have several consequences. There

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62. This observation has been noted and communicated to me by the deans of several California law schools.
63. See supra note 60.
65. See supra Prediction 20.
will be pressures to modify traditional tenure rules by introducing periodic evaluations of tenured faculty. Some existing faculty will need to refocus their teaching and research to new areas of curricular need; I expect these efforts will usually be resisted. Law schools also will resist change in the face of the dramatically changed environment described in previous predictions.

Much more needs to be addressed in examining the future of legal education. Dramatic changes are occurring in the legal profession. Law firms are enormously larger today than in the past. Will they grow still larger in the future? There is great instability among law firms today, with firms dividing and merging and growing and establishing branch offices. Will this instability continue and increase? Will the explosive growth in litigation departments continue? Will law firms increasingly establish subsidiaries to engage in law-related businesses other than the practice of law? Will law firms be able to change their forms of organization in order to have a more effective reward and responsibility structure? And, what will be the effect of all of this volatile change in the practicing profession on American law schools?

Clearly, it is exciting to contemplate our future. Law schools, like the rest of society, will face an increasing crescendo of change. We must prepare ourselves now to most effectively respond to the challenges tomorrow will bring. To paraphrase the remarks of a gifted American leader, who in turn was paraphrasing a great English writer: *Some people see things as they are and ask why. Others dream things that never were and ask why not.* The challenge for all who are concerned about the future of legal education is to “dream things that never were and ask, why not?”

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66. I am paraphrasing Robert Kennedy, who, in turn, was paraphrasing George Bernard Shaw.