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## New Questions on Legal Education

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## New Questions on Legal Education (A Survey)

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[EDITOR'S NOTE: Periodically, *Cleveland-Marshall Law Review* asks prominent legal educators for their views on current problems in legal education. Here are the responses to our most recent survey. The comments are not intended to be comprehensive or definitive, but they reflect significant attitudes of outstanding scholars on important educational issues.]

### I. Aptitude Examination

*The Problem:* When considering the admission of a law student, many institutions place great stress on the applicant's score on the law school aptitude test; others say that the score is not always a reliable criterion.

**QUESTION:** Is the examinee's score on the aptitude test a reliable indication of future success or failure in the law school?

**ANSWERS:**

*Dean Amandes:* Scores in the lower ranges on the LSAT are quite reliable indicators of probable failure in the law schools with which I have been affiliated. Scores in the higher ranges are less reliable predictors of outstanding success in the study of law

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for the test obviously cannot measure motivation, a substantial factor in achieving notable success.

*Prof. Bodenheimer:* Our experience has been that the aptitude test, although it has its definite merits, is not always a reliable indication of success or failure in law school.

*Prof. Elliott:* Generally, yes, as to failure; not necessarily as to success.

*Dean Forrester:* Many law students perform as their scores tell them they should. Others refuse to obey. They make high grades despite low scores and low grades in refutation of high scores. This is fortunate. When scores become entirely reliable life will be much more simple and much less interesting—but they never will. The human spirit will take care of that.

*Prof. Hawkland:* We have found that the LSAT is useful for predicting law school grades; that the LSAT predicts somewhat better than pre-law grades; that a combination of the LSAT score and the pre-law grades furnishes a much more reliable prediction of law school success than either factor alone.

*Dean Hervey:* Generally "yes." Experience has demonstrated however, that an applicant with sound grades in college work in mathematics, chemistry, physics, and English, will do well in law school. In such instances we tend to downgrade the score on the aptitude examination if the college work was done in an institution which maintains standards of high quality.

*Dean Johnston:* Yes—when employed in conjunction with other indicia.

*Dean Maloney:* Yes, when correlated with his overall undergraduate average.

*Prof. Mentschikoff:* A low score is a good indication of potential failure, but I do not believe a high score necessarily means high success.

*Dean Ritchie:* Yes, when considered in relation to college grades. We rate the LSAT score and college record about 50-50.

*Dean Smith:* The LSAT is a fair predictor, but is less reliable when taken alone than when taken in conjunction with undergraduate grades.

*Dean Stapleton:* It should not be considered as an absolute criterion although in eighty plus percent of all cases it is reliable, especially when considered with academic performance at the undergraduate level. However, I have known many candidates with relatively low scores who have done acceptable work and

who have become good lawyers; conversely, there have been those with high scores who have not done well academically.

## II. Legal Greeks

*The Problem:* Often a law school will have at least one of the national legal fraternities on its campus. The question has arisen whether the legal fraternities serve rather as social organizations than as "professional" supplements to legal education.

**QUESTION:** Do legal fraternities offer to the law student a valuable aid in his legal education, commensurate with the time and energy involved?

**ANSWERS:**

*Dean Amandes:* While the emphasis in many chapters of legal fraternities is social rather than professional, they cannot be labelled, per se, good or bad. If Bar contacts with individual attorneys or groups are not being accomplished through other student or Bar organizations, then fraternities, in promoting such contacts, do serve a useful function, probably worth the time expended.

*Prof. Bodenheimer:* We have found that, except for the organization of luncheons with legal experts as speakers, the fraternities fulfil social rather than professional functions and do not offer to the law students a great deal of aid in his legal education.

*Prof. Elliott:* Yes.

*Dean Forrester:* Yes. They offer professional and social values. Both are desirable. Some render outstanding service to the Law School and its students. Others do little.

*Prof. Hawkland:* I think it all depends on the local chapter of the fraternity. Some legal fraternities are worth while. Others are worthless.

*Dean Hervey:* Generally "yes." It varies from institution to institution.

*Dean Johnston:* Not here—but we have an active Professional Affairs committee of the student government. This takes the pressure off the fraternities.

*Dean Maloney:* Yes.

*Prof. Mentschikoff:* Sometimes—but social life is important, too.

*Dean Ritchie:* On the whole I would say yes to this question, although, of course, the situation varies from fraternity to fraternity and school to school.

*Dean Smith:* Not on this campus.

*Dean Stapleton:* At this particular school the legal fraternities are well worth while in their emphasis on legal education. Both fraternities here emphasize scholarship as a condition to membership, and through their separate library and study groups implement the work done by the school. These fraternities are not social organizations in the sense that undergraduate fraternities are.

### III. Exam and/or Class Grades

*The Problem:* The general method of examination in American law schools is to furnish one final examination to test the student's knowledge in a particular course. This "all or nothing" concept may be unfair if the student should be physically ill or mentally tense during the examination; it ignores ability and work indicated in class recitations.

**QUESTION:** Would a mid-term examination in addition to the final one, and/or the counting of class room performance, provide a better indication of the performance-ability of the student?

**ANSWERS:**

*Dean Amandes:* Probably. The problem of physical illness or externally caused mental tenseness can be handled, under an honor system, by postponing that student's examination. To the extent that the difficulty is caused by concern over the "pressure" of the examination, similar pressures of law practice may well cause comparable difficulty there. Perhaps it is best that these problems be faced forthrightly in school rather than for the first time when a client's problems are involved. On the other hand, two or more grading criteria serve to ameliorate the effects of one poor performance.

*Prof. Bodenheimer:* I have doubts as to the feasibility of mid-term exams in many of the law school subjects, but I think that class performance should be taken into account to some extent, especially in borderline cases.

*Prof. Elliott:* No.

*Dean Forrester:* Yes. Mid-term exams would be good. However, one must consider the work load of the professors. Grading

a law exam is a lengthy task. Law professors traditionally have graded their own papers. This is highly desirable. If too many exams are given the instructors will look for outside assistance. With the large classes in law schools today, mid-terms may not be feasible even though desirable. Grading of class performance is desirable if it can be done fairly and equally. This also is difficult in large classes.

*Prof. Hawkland:* I doubt if a mid-term examination would alter very many grades. Perhaps the mid-term would be a good thing to have in the first year, but I would oppose it in the upper classes.

*Dean Hervey:* "Yes" for the first year courses. The law student must accustom himself to the "win or lose" opportunity which he encounters on the bar exam and in the trial of cases in court. After the first year I favor one final examination at end of the course, the examination to be given by numbers with no names on the papers, and the final examination books should be read one question at a time through all of the books before proceeding to the grading of the next question. Moreover, the answer to a question should not be begun unless the reader has time to read the question in all books at that sitting. In this manner his "bad digestion" or "happy outlook" is reflected in the grading of each examinee on that question.

*Comment:* Before any final grade is recorded there should be a conference of teachers at which the grades of each examinee in all courses are reviewed—done by numbers and not by names. This for the reason that final examination papers cannot be graded with mathematical precision. Teachers should bring the final exam books to the conference and where there is a wide disparity in grades given by the several professors to a given student the papers can be reviewed then and there to determine whether the grades indicated should stand. The grades that come out of the conference should be the final grades in the several courses pursued. This method is time consuming in that there must be separate conferences for first year students, etc. Students are important and final grades should be as fair as they possibly can be made.

*Dean Johnston:* Perhaps—many instructors here do consider such factors in determining final grades.

*Dean Maloney:* Yes.

*Prof. Mentschikoff:* No. Lawyers work under tension and students who panic make poor practitioners. Seminar and research papers can indicate other types of legal ability.

*Dean Ritchie:* I believe that the correlation between the mid-term and final examination would be very high and therefore not worth the class period and review time that the mid-term exam would require. If classes are small enough to permit a meaningful record of a student's classroom performance I believe that such performance should be recorded and enter into the final grade of the student.

*Dean Smith:* Probably. The examination is also a form of teaching device, and greater use would be desirable. In large schools, the problem is one of professional time allotment.

*Dean Stapleton:* All factors should enter into the final evaluation of a student's work, and certainly classroom performance should be a criterion. It does not follow in my opinion that a mid-course or mid-term examination would of itself be the answer. The goal that the individual students seek is in itself based on final performance, and the sooner that these students think in such terms the better the end result should be.

#### IV. Socratic Method

*The Problem:* A popular method of law school instruction is by the Socratic method of analysis of cases. Recently, more schools appear to be emphasizing the lecture, problem, or adversary method.

**QUESTION:** Is the Socratic method of teaching law as advantageous as the lecture, problem, or adversary method?

**ANSWERS:**

*Dean Amandes:* A good legal education involves, in varying degrees, all methods suggested. In fact most professors have employed all methods at one time or another, depending upon the subject matter, and the time allotted to it. Which method predominates often depends upon the relative position of the course in the three year curriculum.

*Prof. Bodenheimer:* I believe in the use of multiple methods. Although the Socratic method should probably remain the chief vehicle of instruction, it should be supplemented by occasional lecturing and not too infrequent use of the problem method, especially in the third year. Actually, I would favor experimental courses for the third year centered on the problem method. I have not as yet used the adversary method.

*Prof. Elliott:* Yes, in first year; not necessarily in second and third years.

*Dean Forrester:* It is much more advantageous. It stimulates thought. It trains in analytical thinking. It provokes ideas where none existed before—for the teacher as well as the student. It is the greatest—but it is not the only method worthy of use. Students need a change of pace after the first year. The answer is in the problem and seminar courses where individual research and writing are required, followed by critical discussion of the individual papers. The lecture method is weak except in the hands of an exceptionally able and stimulating person.

*Prof. Hawkland:* I think the first year courses should be taught by the "Socratic method." I think the method loses some of its effectiveness in the upper classes. There is a great volume of material to cover in the second year, and I think some lecturing may be needed to get over it. Problems also have their place in the second year, and they may well be the best way to teach in the 3rd year.

*Dean Hervey:* The Socratic method appears to be sound method for first year courses. Beyond the first year there is much lost motion and time if the method be continued. Remember, however, that there are about as many "Socratic methods" as there are teachers using it.

*Dean Johnston:* A combination of methods is better than any single one. I know of no course taught "purely" by any one of these methods.

*Dean Maloney:* Not when solely employed.

*Prof. Mentschikoff:* Depends on professor and place in curriculum. Problem method more suitable as student develops more capacity for handling legal materials.

*Dean Ritchie:* Definitely superior in the first two years. Problem method I think best in the third year.

*Dean Smith:* The Socratic method is highly desirable in the first year. It is less needed, though still desirable, at advanced levels. There is no reason why a student should not be exposed also to lecture method, problem method, adversary method at various points in his three year course.

*Dean Stapleton:* The lecture method in toto is in the main in the discard so far as legal instruction is involved, and the Socratic method is, I believe, in general use. Many instructors who use the Socratic method preface the discussions with lecture material, the better to acquaint the student with the scope of the material into which inquiry is to be made, and this is excellent.

The adversary method is excellent but this takes an exceptional instructor. All in all, the Socratic method amplified by illustrative, prefatory, short lectures seems best suited to the needs of the students.

### V. Bar Exam Waiver for Top Students

*The Problem:* Generally the only manner in which a law student may become a licensed attorney is by passing a state bar examination. The student with above average academic grades is not given any special privileges relative to the bar examination.

**QUESTION:** Should the state bar examination be eliminated for the student with above average academic grades?

**ANSWERS:**

*Dean Amandes:* Assuming that the interesting mechanical and administrative problems involved can be resolved, there is considerable merit in such a plan. Good students (top 25%) from approved schools invariably pass the bar examination, on the second if not on the first try. Such a plan would bring no one to the Bar who did not deserve to be there. It should add considerable incentive for students throughout their three years of study. Additional burdens would be imposed on the schools, i.e., more pressure would arise to assure balanced grading in sectioned courses, but they are far from insurmountable and probably would be outweighed by renewed student enthusiasm. [See, Steven's, Comments, in 32 *The Bar Examiner* 74 (1963).]

*Prof. Bodenheimer:* I don't think so. This would increase competitive scrambling for good grades beyond a desirable extent.

*Prof. Elliott:* No.

*Dean Forrester:* Yes. This would add incentive to make good grades throughout law school. The incentive is often lost after the first year. It would also lessen the burden on the examiners. However, there is an obvious disadvantage in having a part of the senior students preparing for the bar exam and the other part unconcerned.

*Prof. Hawkland:* The legal profession is the responsibility of its members and the law schools. The law school should not be able to admit a man to the bar any more than the bar should be able to admit a man to law school. Bar examinations, of course, leave much to be desired. They might well be replaced by a

Board of Bar Admissions which might use something other than an examination as its criterion for admission. But the board ought to be largely the responsibility of the organized bar—and not the responsibility of the law school. [See Dean Leon Green, "Legal Education and Bar Admission," 20 Amer. Bar Assoc. J. 105 (1934).]

*Dean Hervey:* No. The bar examination requires a law school graduate to make the last comprehensive review of the law that he will ever make in his life. Such a review should induce him to see the law as a whole or system rather than as pigeon-hole courses or divisions. Moreover, all law schools are not of the same quality and the bar exam equates the graduates of all schools whose graduates appear for the exam. Additionally, a bar exam supplies motivation in law school which could otherwise be lacking, especially in the adjective law courses.

*Dean Johnston:* Not now—there's too much difference in the quality of the law schools.

*Dean Maloney:* No.

*Prof. Mentschikoff:* No.

*Dean Ritchie:* No.

*Dean Smith:* I think so, but I would not want the plan to be a foothold for restoring full diploma privilege.

*Dean Stapleton:* The bar examination is a traumatic experience to which one should not be subjected if there is an equivalent evaluation. It is in a sense comparable to uprooting a plant and looking at its roots to see if it is growing. Law school graduates with above average grades should be admitted to the practice of law without further examination. This privilege should be accorded, however, based upon the calibre of the law school itself, and until such time as all law schools maintain a high degree of performance, and are held to it by objective evaluation by accrediting bodies, it might be dangerous to grant any concessions.

## VI. Library Acquisitions

*The Problem:* Most law school libraries have a wide variety of publications on their shelves, but seem to be short on textbooks and casebooks currently being used in the various courses.

**QUESTION:** Should a law school library make available on its shelves textbooks and/or casebooks which the students are required to purchase for courses?

## ANSWERS:

*Dean Amandes:* Being relatively unfamiliar with the practice of "required" texts, I turn to casebooks. A basic question is: should library funds be devoted to indirect scholarships through the purchase of casebooks, or should these funds be devoted to longer range library development? Only if there is the combination of abundant library funds and limited scholarship money can such purchases be justified. Pedagogically, each student should feel free to annotate his casebook, a practice hardly approved by librarians where their books are involved. Casebooks are designed for extensive use in class. Each student should have his own. Texts, designed for use in the library and elsewhere, should be provided by the law school library in sufficient numbers to encourage maximum use of the library and its professional atmosphere.

*Prof. Bodenheimer:* This is primarily a budgetary problem. If the library can afford it, such textbooks and casebooks should be made available in the law library.

*Prof. Elliott:* Textbooks, yes; casebooks, no.

*Dean Forrester:* Yes, within reason. Students obviously should possess and use their own casebooks, but the library should have some copies available for supplemental use. Textbooks should be available in the library. Students should not be required to purchase them unless they are used extensively in the course.

*Prof. Hawkland:* I think a library should have available plenty of good textbooks—indeed, all textbooks. I have no objection to making available casebooks in the library, although the theory is that these books enable the student to work at home at night. I think the library should be a place to do research—not a place simply to read casebooks. In other words, the library should not be a mere reading room. But if there is plenty of space, I see no reason why the students should not also use the library as a reading room for casebooks—and in this case I would think the library should contain some casebooks. Of course, the student is expected to have a casebook in class with him, so the library could not supply the casebooks which have been adopted for the various courses. But much research can be done by way of casebooks, and I think some copies of all casebooks should be on the shelves.

*Dean Hervey:* No. Students, like lawyers, should own their own tools of the profession.

*Dean Johnston:* If possible—but not at the expense of other needed items.

*Dean Maloney:* Not unless an unusual amount of extra space is available and the library budget is exceptionally affluent.

*Prof. Mentschikoff:* To some degree but basically no—a law library is a research tool, not a legal aid department.

*Dean Ritchie:* Not in sufficient number to discourage student purchase of the books they are required to have.

*Dean Smith:* Generally no. The textbooks should be first supplied. Casebooks are probably best financed by the student. Given unlimited library funds, I would not object to furnishing casebooks, but the condition does not exist.

*Dean Stapleton:* Yes, but in limited number and on a reserve shelf where the traffic in them can be closely policed. Otherwise the individual student might monopolize a given text at the expense of another. Students as a matter of course should have their own volumes for annotation and for future reference in terms of such notes.