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ANATOMY OF LEGAL EDUCATION (REPORT OF THE TUNKS COMMITTEE): THE WAY WE WERE AND THE WAY WE ARE

Anatomy of Modern Legal Education. A Report of a Special Committee of the Association of American Law Schools. West Publishing Co., St. Paul, 1961. 497 pp.

Afton Dekanal*

Introduction by David H. Vernon**

INTRODUCTION

Lehan K. Tunks, then Dean of Rutgers Law School in Newark, chaired an Association of American Law Schools Committee on Law School Administration and University Relations¹ that conducted “an inquiry into the adequacy and mobilization of the financial and human resources in American law schools for research and education for the legal profession”² The study, begun in 1955, resulted in a 1961 report, ANATOMY OF MODERN LEGAL EDUCATION, examining the 1956–57 operation of the 129 law schools then on the American Bar Association’s approved list.³ A 146-page questionnaire answered by the dean of each school and a shorter questionnaire answered by specially-created faculty committees at each school provided the basic data.

From the perspective of legal education in the 1980’s, the law school world of 1957, as presented in the Tunks Committee report, seems almost a

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1. Committee members who issued the final report (*see infra* note 2) were Harry M. Cross, University of Washington; Paul R. Dean, Georgetown; Thomas I. Emerson, Yale University; Charles W. Fornoff, University of Toledo; John G. Hervey, American Bar Association; W. Page Keeton, University of Texas; James D. Sumner, Jr., University of California, Los Angeles; William C. Warren, Columbia University; John W. Wade, Vanderbilt University; Lehan K. Tunks, Rutgers University, Chairman.

2. ASSOCIATION OF AMERICAN LAW SCHOOLS, ANATOMY OF MODERN LEGAL EDUCATION (1960), Preface at III [hereinafter referred to as ANATOMY]. Following the pattern that Dekenal established in the letters, references to ANATOMY appear in brackets in the text of the letters.

3. When the Committee made its first mailing in the late summer of 1957, there were 129 schools on the ABA’s approved list. As time passed, two more schools were added to the list and some of the data reported by the Committee relates to 131 schools. *See ANATOMY, supra* note 2, Preface at IV.

miniature. It is not that the 129 approved schools in 1956 expanded to 175 by 1985⁴ that is so striking; rather, it is what appears to be the enormous increase in resources now devoted to legal education and the corresponding growth in its breadth and reach. The report was the first, and remains the only, extensive publicly available quantitative study of legal education in the United States.⁵ It presents an interesting snapshot of legal education as it then existed and provides an excellent factual base against which to measure legal education today. Further, the Tunks Committee report made a series of thoughtful recommendations concerning the improvement of legal education.

In an earlier article, I explained how I came to be custodian of Professor Afton Dekanal's papers. It seems appropriate to repeat that explanation here so that everyone will understand why my role is limited to writing an introduction.

All of us in law teaching remember Afton Dekanal with affection and admiration. He was 88 years old when he died last year after a distinguished career in law teaching and administration. He had been President of the Association of American Law Schools as well as chair of the Section of Legal Education and Admissions to the Bar of the American Bar Association. Deke, as most of us knew him, retired when he was 65 after service as a faculty member at seven law schools and dean at two. His slogan became, "Have Exam, Will Travel," and during the twenty-three years between his retirement and his death, he was a distinguished visiting professor at a different law school each semester. Thus, from the time of his retirement until his death, he taught at forty-six different law schools. He was killed by a bolt of lightning immediately after having taught the last class of the semester and before he had the opportunity to write and to grade the final examination, achieving the dream most of us have.⁶

Shortly after Deke's death, my wife and I bought an old farm house that Deke and his wife had owned. The furnishings in the farm house were included in the sale (Mrs. Dekanal, Dora, had exquisite taste). After having lived in the farm for several months, I discovered behind a drawer in Deke's old roll-top desk several onion skin carbons of letters that Deke had written. As I placed the carbons in an envelope in order to return them to Mrs. Dekanal, I noticed that three of the letters, all dated in 1984, shortly before

4. See Memorandum dated August 19, 1984 to Members of Site Evaluation Team from James P. White, Consultant on Legal Education to the American Bar Association, History of the Accreditation Process. Of the 175 schools on the approved list, one, the Judge Advocate General's School, does not award the J.D. degree.

5. The Consultant on Legal Education to the American Bar Association gathers quantitative information annually from law schools and distributes the data to the law schools. The information is confidential, however, and is not available generally.

6. Vernon, *Ethics in Academe—Afton Dekanal*, 34 J. LEGAL EDUC. 205, 205 (1984).

Deke's death, had been written to Professor Lehan K. Tunks of the University of Washington. I did not read the letters at that time, of course, but when I was asked to prepare a comment for a Washington Law Review issue dedicated to Lee Tunks, I remembered them and asked Mrs. Dekanal if I could read them. She agreed. As I read the letters, I realized that Deke, after rereading the report of the Tunks Committee, had become nostalgic and, more to the point, had recognized that ANATOMY OF MODERN LEGAL EDUCATION was an important document for anyone interested in legal education, both then and now. I decided that rather than preparing an independent comment, it would be more appropriate to have Deke's letters appear in the Law Review issue honoring his friend and mine, Lee Tunks, with my role being limited to writing an introduction. (It seems appropriate to present Deke's letters in a law review since, as the consummate law professor he was, he footnoted them.) Deke's stature in legal education make his comments substantially more significant than mine would be. Thus, with his widow's consent (but without obtaining Lee Tunks' permission), I present Afton Dekanal's observations concerning the Tunks Committee report. It is a matter of regret to me that Lee Tunks' responses to Deke were not preserved.

THE SNAPSHOT—LETTER 1

January 12, 1984

Dear Friend Lee:

I hope this letter finds Margaret and you well. I know it will find both of you busy. Over the last week, I reread the fine "ANATOMY" report you and your Committee did on the status of legal education in 1956–57. I find it extraordinary that scholars have not used the report as a foundation for a continuing series of quantitative studies of legal education. You gave them a fine base, and my guess is that ultimately it will be used effectively by those wishing to explore the development of legal education in the years following World War II.

One of the things ANATOMY does is present a snapshot of a world in which both of us lived and which no longer exists. Although I view most of the changes we have witnessed as improvements, I must confess that I have missed having the AALS Annual Meetings at the Edgewater Beach and walking the "passagio" there.⁷ The world of legal education in which we

7. For a great many years, the Association of American Law Schools met two years out of every three in Chicago at the Edgewater Beach Hotel. The Edgewater, since razed, had a long and very wide corridor (known by all as the passagio) in which deans and senior faculty and those who wished to become faculty walked back and forth hoping to be noticed. [The numbering of the footnotes in the letters has been adjusted to accommodate the footnotes in the Introduction.]

lived after World War II was not only small and inadequately financed, but it rarely exhibited educational imagination. Too many among us believed that the pre-World War II curriculum at Harvard was the only thing legal education could and should do. We know better now, thank heavens, and more importantly, we know that there is no one right way to carry out our educational mission.

As I went over ANATOMY, I recalled the law school world of the mid-1950's. By 1948–49, the post-World War II boom in legal education, financed by the return of veterans armed with the GI Bill of Rights, had more than doubled the pre-War first-year enrollment.⁸ As the veterans completed their education, however, enrollment fell quickly and by 1952 the number of students starting law school fell by about one third. My recollection was that by 1956, first-year enrollment had climbed back a bit. I checked the numbers and find that my recollection was accurate.⁹ Enrollment peaked at 19,532 in '48–49, fell to 13,111 by 1952–53 and climbed back to 15,321 by 1956–57. It did not get as high as the post-war peak again until 1963–64.

ANATOMY compiled data from the 129 law schools on the ABA's approved list in 1955–56.¹⁰ (The Association of American Law Schools membership stood at 110.) As I recall it, the Law School Admissions Test had come into existence in the late 1940's and was in substantial use by 1956, although at least a few schools, and perhaps many, were still using the thermometer test for admission—98.6 degrees, give or take one degree, and both you and your tuition were accepted. If the 15,321 students entering in 1956–57 had been spread evenly among the 129 schools, each school would have had an entering class of 119. Total enrollment in the J.D. programs of the 129 schools in 1956 was 35,238.¹¹ Again, if the students had been distributed equally among the approved schools, each would have had a student body of 273. I still view the ideal law school size as being between 275 and 325 students. At a relatively small school, the faculty member is able to get to know students, something that is almost impossible in a larger school. (I keep telling myself that the increased size of the student body is responsible for my failure to remember students, but I have a nagging fear that age may have something to do with it.)

8. The law school registration figures for the Fall of 1940 are found at 9 AM. L. SCH. REV. 831 (1938–42). The report lists 10,166 entering students, but many of the schools listed were not on the American Bar Association's approved list.

9. Memorandum dated September 7, 1984 to Deans of ABA-Approved Law Schools from James P. White, Consultant on Legal Education to the American Bar Association, Enrollment of Women in ABA-Approved Law Schools.

10. See *supra* note 3.

11. See *supra* note 9.

The attrition rate coming into 1956–57 was very high by current standards. Only 19,917 of the 35,238 enrolled students had advanced beyond their first year, although a total of 28,848 students had started law school in 1954 and 1955.¹² Since some students were in part-time programs and had started school before 1954, the attrition rate was well over 30%. While many fine lawyers who earned degrees during that era would not be admissible today, I would resist a return to open admissions.¹³ The human cost is simply too high.

Talking about size, ANATOMY reported that direct operating costs of law schools in 1956–57 ranged from \$33,000 to \$2,334,779 among the 103 schools that reported on the subject. Can you believe that a law school functioned for a full academic year on a \$33,000 budget or that one-half of the schools did the same with budgets of \$113,000 or less? [74] Obviously you can. You were Dean at Rutgers as the report was being prepared. Knowing your persuasiveness on budget arguments, however,—“What’s fair is fair!” and “That will buy you mediocrity!”—I have no doubt that your budget was well above the average. Direct operating costs were defined in the Report as “all expenses, including that of the library, which are incurred because there is a law school to be financed and which would not have to be incurred if there were no law school.” [73] The average operating cost was reported to be \$201,879 and the median cost to be \$113,000. You extrapolated from the 103 reports to estimate that the total direct operating costs for the 131 schools involved was between \$25,000,000 and \$26,446,187. [73, Note 1] With 35,238 students at the 131 approved schools (the number had increased as the study progressed), the direct annual cost per student in 1956–57 was between \$709 and \$820 per student. The direct annual cost per student at a school with a student body of 273 and a direct operating cost of \$201,879 was \$740.

Although I knew in the 1950’s that private giving played a minor role in meeting direct costs, I had forgotten quite how minor that role was. Your Committee reported that 60% of the law schools had no income from endowment or from annual giving programs. [87–88] Thus, tuition or a mix of tuition and state appropriations were the *only* funds available at 60% of the schools. Only 16% of the schools reported annual giving of more than \$10,000 for use in the funding of current operations. [87–88] The absence of financial support, both for publicly funded and private schools, was really the hallmark of the era.

12. *Id.*

13. The AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS and the BYLAWS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS would seem to bar any return to open admissions. *See, e.g.*, ABA STANDARDS 304(c) and 501; AALS BYLAW 6-2(a).

My curiosity was piqued and my memory less than accurate as I tried to visualize faculty size in 1956–57. I looked at the *Directory of Law Teachers* for that year and checked ten schools, almost, but not quite, at random.¹⁴ The ten schools averaged between 13 and 14 full-time faculty members each, excluding the dean and librarian. (Boston College—11; Berkeley—16; Cornell—14; Iowa—10; Louisiana State—12; Michigan—28; New Mexico—6; Ohio State—15; Utah—11; and University of Washington—15.) I then checked the enrollments at the ten schools¹⁵ and discovered that the student-faculty ratios ranged from 15 to 1 to 46 to 1, with a mean ratio of 25 to 1, a far cry from what would be viewed as a reasonable average ratio today. Of the 138 faculty members at the ten listed schools, two or three were women. (Women comprised 4% of the law school classes that entered in 1954, 1955, and 1956.¹⁶)

My recollection is that Dora and I lived about as well on our salary in the mid- and late-1950's as we did later. The figures your Committee reported, however, indicate that salaries were pretty low. The highest 1956–57 faculty salary at the school with the highest 1956–57 salary level was \$19,500 and the median and mean salary for Full Professors at that school was approximately \$11,250.¹⁷ At the school with the mean salary level, the

14. Although the schools were selected with an eye to assuring reasonable diversity of size, they cannot be described as being selected at random because I view all of them as "above average" schools.

15. See Hervey, *Law School Enrollment—1956*, 9 J. LEGAL EDUC. 250-262 (1956).

16. See *supra* note 9.

17. ANATOMY, *supra* note 2, at 264, Table II.

1956-57 Salaries Paid Full-Time Instructors

Salary Level	No. Schools	Mean Average	Median	Maximum	Minimum
Highest	30	\$ 5,000	\$ 5,050	\$ 6,845	\$ 2,520
Mean	30	4,922	5,000	6,845	2,520
Median	30	4,889	5,000	6,845	2,520
Lowest	30	4,794	4,866	6,845	2,520
Salaries Paid Assistant Professors					
Highest	72	\$ 6,481	\$ 6,190	\$11,600	\$ 4,000
Mean	72	6,268	6,100	9,866	4,000
Median	72	6,100	6,000	9,500	4,000
Lowest	72	6,021	6,000	9,500	4,000
Salaries Paid Associate Professors					
Highest	76	\$ 7,734	\$ 7,200	\$13,500	\$ 5,000
Mean	76	7,408	7,139	12,033	5,000
Median	76	7,406	7,125	12,000	5,000
Lowest	76	7,124	7,038	11,000	5,000
Salaries Paid Professors					
Highest	100	\$11,374	\$11,050	\$19,500	\$ 5,500
Mean	100	9,254	9,056	16,500	5,500
Median	100	9,093	8,928	16,500	5,500
Lowest	100	7,826	7,500	14,200	5,500

highest salary was \$16,500 and the average salary for Full Professors was about \$9,150. (I was at one of the average schools but, thank goodness, I had a somewhat higher than average salary.) Your figures indicate that there was relatively little spread among schools at ranks below Full Professor, with Instructors being paid on an average about \$5,000, Assistant Professors about \$6,200, and Associate Professors about \$7,500.

One of the more amazing parts of ANATOMY is the picture it gives of law libraries. As far as I know, no other part of the law school world has grown as much. You remember, I know, your recommendation that AALS Standards concerning libraries be changed to require that “[i]n no case shall the annual expenditure for the collection total less than \$8,500.” [7] In dealing with acquisitions budgets over and above continuations, your recommendation was that AALS require average annual expenditures over a three year period of \$3,500 for collections under 50,000 volumes, \$5,000 for collections between 50,000 and 100,000, and \$10,000 for larger collections. [7] The Committee used 1957–58 figures in reporting on acquisition budgets. [451] In that year, only three schools spent more than \$50,000 for acquisitions, and 46 schools spent \$10,000 or less for that purpose. The median school spent between \$12,501 and \$15,000. Assuming an average student population of 273, the median school would have spent between \$46 and \$52 per student for library acquisitions in 1957–58.

The more I think about ANATOMY, the more I am convinced that it was a job well done and one that can be used as a base for some very interesting work on legal education. Are you interested in undertaking it?

Sincerely,
Professor Emeritus
Practically Everywhere

A ROUGH COMPARISON—LETTER 2

Sept. 12, 1984

Dear Lee:

Regards once again to both of you. The more I think about ANATOMY, the more I am convinced that it could be used as a base for a very interesting study of legal education over the past 30 years. Certainly more schools exist, more dollars are spent, more faculty members teach, more students are taught, more books are bought, more professionals and non-professionals staff the law libraries, more and better law school buildings exist, more secretarial help is provided, and more deans serve shorter terms in the 1980's than in 1956–57. Just for my own edification, I used ANATOMY as a base to determine what some of the quantitative changes have been since the Report was written. I, of course, undertook a very rough analysis

simply to prove to myself that a complete scholarly analysis would be fruitful.

First, it seems necessary that any study place legal education in context. Thus, I combined my memory and a few sources and can report that law school enrollment remained relatively stable from 1956–57 until 1962–63 when about 2,000 more students entered law school than had done so the year before.¹⁸ After going up by about 2,000 a year for the next three years, the size of the entering class stabilized until 1969–70 when it went up by about 5,000 in a single year. With an additional increase of 5,000 entering students in the following year and a total of 5,000 more over the next five years, law school enrollment boomed through the 1970's.

The increased enrollment of the 1970's was fueled almost entirely by the increase in the number of women who enrolled.¹⁹ A total of 553 women (4%) entered law school in 1956. By 1969–70, the number had increased to 2,103, or 7% of the entering class. From then on, the percentage of women in entering law school classes increased each year during the 1970's and into the 1980's. In 1984, 16,236 women constituted 40% of the entering class of 40,747.²⁰ The number of male students entering law school peaked with the class that entered in 1971, when 31,845 male students enrolled. By 1984, the number of males in the entering class had declined to 24,511. Thus, as first-year enrollment increased from 36,171 in 1971 to 40,747 in 1984, the number of males entering law school decreased by 7,334 and the number of women increased by 11,910.

If the 40,747 students who entered law school in 1984 were spread equally among the 174 schools on the ABA's approved list, each school would have had an entering class of 234 as contrasted with the 119 average size in 1956. Total enrollment in the fall of 1984 was 119,847²¹ as against 35,238 in 1956. If the students were distributed equally among the approved law schools, each school would have a student body of approximately 688, or 2.52 times as many students as the 273 average student body in 1956–57. The attrition rate coming into the 1984 academic year was between 5% and 6%²² as compared with the 30% or higher rate in

18. See *supra* note 9.

19. *Id.*

20. [Professor Dekanal apparently received advance notice of the 1984 enrollment figures. The official count did not appear until after his death. See Memorandum D8485-40 dated February 15, 1985 to Deans of ABA-Approved Law Schools from James P. White, Consultant on Legal Education to the American Bar Association, Press Release on Law School Enrollment Study.]

21. *Id.*

22. According to the memorandum cited in note 9, *supra*, 83,193 students entered law school in 1982 and 1983. The memorandum cited in note 20, *supra*, reports that 79,100 students other than entering students were enrolled in 1984, 5% fewer than started over the prior two years. See also Memorandum QS8384-22 dated February 27, 1984 to Deans of ABA-Approved Law Schools from James P. White, Consultant on Legal Education to the American Bar Association, Student Attrition

1956. Because of the decline in the attrition rate, the 266% increase in the size of the entering class between 1956 and 1984 (15,321 and 40,747) translated into a 340% increase in the overall J.D.-candidate population in 1984 (35,238 and 119,847). During the same period, the number of schools on the ABA approved list increased from 129 to 174.

I know that since 1956–57 both tuition and private giving to law schools has increased, perhaps geometrically. (I paid \$400 in tuition for the academic year as an undergraduate of Harvard.) I thought it might be interesting to see how much a law school in 1984–85 would have to spend per student to keep pace with 1956–57. Using the 1956 annual consumer price index (CPI) of 1.229 as the base,²³ and the July 1984 index of .321²⁴ as the approximate current value of the dollar under the CPI, the 1956–57 dollar was 3.8 times more valuable than the 1984 dollar. Without claiming scientific accuracy, but using the very rough figures provided by the CPI to calculate the amount of money each law school spent per student, it is possible, using the Committee Report as a base, to determine whether there has been a sizeable increase in the resource allocation to law schools over the years, at least in terms of dollars spent per student enrolled. To keep pace with the \$709 to \$820 cost per student in 1956–57 and taking into account the fact that the 1956 dollar was worth 3.8 times the 1984 dollar, the cost per student in 1984 would have to be between \$2,694 and \$3,116. Thus, a school enrolling 688 (the average size in 1984) would have direct annual operating costs of between \$1,853,472 and \$2,143,808 to match the expenditures of from \$193,557 to \$223,860 for a student body of 273 at the average school in 1956–57.

Private giving has played a major role in the funding of legal education at a great many schools in the 1980's. Although I made no effort to gather the data, it would be fascinating to use the figures in ANATOMY as a base and ascertain the growth in private support for legal education over the past 30 years. My own hypothesis is that a significant portion of the real growth in the resource base supporting legal education over the years has come from the growth of private giving, although I assume that a majority of the increase has come from higher tuition and legislative appropriations.

If the 3.8 consumer price index multiplier is used to convert 1956–57 salaries to their equivalent in 1984–85, the mean average salary for Full Professors at the mean and median salary level schools would be \$35,165 (\$9,250 in 1956–57) and \$34,401 (9,000 in 1956–57), respectively. The

Rate, reporting a 6% attrition rate.

23. STATISTICAL ABSTRACT OF THE UNITED STATES 1984, TABLE NO. 796. PURCHASING POWER OF THE DOLLAR: 1940 TO 1983, 484 (104th ed. 1983).

24. 64 Survey of Current Business, No. 10, Current Business Statistics, Consumer Prices S-6 (U.S. Dept. of Commerce/Bureau of Economic Analysis (Oct. 1984)).

school having the highest salary scale would have mean and median salaries of \$43,221 and \$41,990 respectively and a high salary of \$74,100. Without worrying about exact figures, it is clear that Full Professors, and other faculty members, have made at least some progress as against the Consumer Price Index. Certainly the schools having the highest average Full Professor salary scales pay far in excess of the 3.8 multiplier, and do so at all ranks. Schools in the middle bracket as to salary levels certainly exceed the 3.8 multiplier, again at all ranks. Whether we faculty members are truly better off is conjectural. The dollar amount, of course, is just the starting point. In testing current salary scales against those of the mid-1950's, changes in income tax rates, the increase in sales taxes and the social security tax, the establishment of retirement and other fringe benefit programs, and other similar matters that determine spendable income must be taken into account. Individual schools can test themselves to determine whether and how much progress they have made. ANATOMY is an excellent starting point for an analysis.

Turning once again to the ten schools chosen almost at random to determine faculty size and student-faculty ratios in 1956-57, I can report the following to you. During the 1984-85 academic year, the same ten schools had faculties as follows, with the 1956-57 faculty size noted in parentheses: Boston College—32 (11); Berkeley—50 (16); Cornell—27 (14); Iowa—37 (10); Louisiana State—30 (12); Michigan—53 (28); New Mexico—28 (6); Ohio State—33 (15); Utah—21 (11); and University of Washington—26 (15)²⁵ By 1984-85, the two women on the faculties of the ten schools had grown to 43 of the 337 total full-time faculty members.²⁶ Faculties at the ten schools were 2.4 times larger, moving from 138 to 337. With a total 1984-85 enrollment in the ten schools of 6,687,²⁷ the student faculty ratio is slightly below 20 to 1 in contrast with the 25 to 1 ratio of 1956-57—an improvement.

As noted in my earlier letter, the growth in acquisitions budgets of law libraries since 1956-57 is quite startling. The median schools in 1956-57 spent between \$12,501 and \$15,000 for all acquisitions. With an average student body of 273, the schools spent an average of from \$46 to \$55 per student. Even recognizing that the ten schools I used for comparison are well above the median in the size of their acquisitions budgets, the average per student expenditure by the ten schools in 1982-83 was more than \$700 per student. The ten schools spent an average of \$439,000 for acquisitions

25. DIRECTORY OF LAW TEACHERS (AALS 1984).

26. *Id.*

27. The figures were provided by Bruce Zimmer, Executive Director/Vice President, Law School Admission Council/Law School Admission Services.

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in 1982–83 and very probably averaged over \$500,000 each in 1984–85.²⁸ The growth of law libraries over the years, both in volume and quality of service, would make an interesting study, and once again the materials generated by the Committee would provide an excellent base on which to build the study.

I suppose my insistence in these two letters that ANATOMY would provide a solid starting point for studying changes in legal education over the years involves preaching to the already converted. To the extent that you have retained the raw materials gathered for the study, I believe you would make a major contribution to legal education if you undertook a serious (as distinguished from my armchair) analysis of the current state of legal education as compared with its state when ANATOMY was done. Even if you have not retained the raw materials, you would be the ideal person to undertake the study.

I will try to restrain myself and not bother you further with the meanderings of a frustrated empiricist.

Sincerely,

GOING BEYOND THE QUANTITATIVE—LETTER 3

September 30, 1984

Dear Lee:

Despite my promise of restraint, I again take pen in hand (or dictating equipment to mouth) to write (or talk) about ANATOMY. This letter will be shorter than my first two. Please do not feel obliged to respond.

As you well know, ANATOMY went well beyond nose and dollar counting in its effort to analyze legal education and to identify trouble spots. The Committee's analysis and recommendations provided a substantial impetus for a great many important improvements in legal education. Among other things, the Committee's recommendation provided the impetus for the establishment of the Office of Executive Director of AALS [47] and, through that mechanism, for the improvement of the intellectual content of the AALS Annual Meetings and—more recently—the various educational workshops and seminars the AALS sponsors during the year. If that were the Committee's only accomplishment, it would have made the effort worthwhile.

28. Thomas, *1981–82 and 1982–83 Summaries of Law School Library Statistics and Observations on Application of Library Statistics*, 76 *Law. Lib. J.* 632, 680-83 (1983). [Professor Dekanal apparently examined the reported expenditure per enrolled student and multiplied that amount by the number of students enrolled. He seems to have assumed that the 1982-83 enrollment was very much the same as the 1984-85 enrollment.]

Although AALS did establish a full-time secretariat as recommended by your Committee, it did not follow the Committee recommendation that the Executive Director be provided “with a research arm as the device most appropriate for the undertaking of broad-based factual inquiries designed to contribute to the refinement of perspectives, ends, and means of legal education.” [496] The time may be ripe for a reconsideration of your Committee’s recommendation.

The Report spent an appreciable amount of time considering the role of law faculties in the process of appointing deans and other colleagues. [132–249] It identified a lack of faculty participation at what most often is the crucial point in the process—the making of the initial recommendation—and recommended changes in AALS regulations designed to assure an appropriate faculty role. [2] My own experience indicates that the Committee’s recommendations have become accepted practice in legal education.

I would quarrel with the Committee’s position that the granting of tenure is a final determination of the faculty member’s competence and not subject to being raised thereafter. In discussing incompetence as a reason for terminating the appointment of a tenured faculty member, the Committee said:

The standard [incompetence] is . . . a most dubious one. The decision to confer tenure itself necessarily determined the question of competence. To revive this issue at any later time as a ground for terminating tenure would leave the faculty member with little or no security and would jeopardize the entire tenure system. Such a standard seems clearly inadmissible. [225]

I believe the Committee was wrong at two levels. First, it seems virtually impossible to defend continued tenure for a faculty member who in fact is not competent merely because the tenure-granting authority was in error in judging the faculty member’s competence when it made the tenure decision. Obligations to students, colleagues and the public outweigh the value of tenure protection for one who is shown by clear evidence to be incompetent, and always to have been incompetent, in a procedure in which the institution must carry the burden of proof. Second, over my teaching career, I have had colleagues (very few, thank goodness) who clearly were competent when tenure was granted but who permitted their skills to rust and their minds to deteriorate thereafter. There is no justification for forcing a law school to continue such a person in faculty status.

The Committee did much more, of course. Policy recommendations by the Committee for changes in AALS membership requirements were adopted in large measure by the Association and remain as important elements of AALS policy. Thus, AALS substantially followed, and still

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follows, the Committee recommendations as to law school autonomy [8],²⁹ faculty participation in governance [2],³⁰ faculty teaching loads [3],³¹ the bulk of instruction being provided by full-time faculty [4],³² independence of law school libraries [5],³³ and faculty status for the law librarian [5].³⁴ Most of the Committee's several recommendations for improved administration of law schools are now commonly in place. All of us now in legal education owe the Committee a debt for a job well done.

With the current decline in demand for legal education³⁵ and possible financial difficulties resulting from that decline, I believe that the AALS would do well to undertake a new empirical study of legal education patterned in part on the work your Committee did. Legal education has made enormous qualitative (as well as quantitative) gains over the past fifteen years. We do not want to slide back to the bad old days of having students look to the right and left with the knowledge that one of the three would not earn a degree. Both ABA and AALS have attempted to reflect the qualitative gains we have made in their regulations.³⁶ It is difficult, however, to overcome a strong societal tendency to rely on identifiable quantitative measures that are easy to prove rather than qualitative standards that almost by necessity are ephemeral.³⁷

Lee—you and your colleagues made a major contribution to legal education with your work on the ANATOMY. You personally made other major contributions, of course, as a faculty member at Iowa and as dean of both Rutgers and Washington, and as an intellectual mentor for several generations of law school faculty members and administrators. One of those who often mentions how much you contributed to his education and career is our joint friend, young Dave Vernon. Dave (and his wife Rhoda) join Dora and me in wishing both Tunks—Margaret and Lehan K.—the very best. We join together in expressing our appreciation for all you have done for legal education as such and for us personally.

Let me close by saying that you are one of the few people I ever knew who had truly new ideas almost on a weekly basis. Some of the ideas actually were good—expensive, but good.

Very Sincerely,

29. ASSOCIATION OF AMERICAN LAW SCHOOLS HANDBOOK, BYLAWS Sec. 6-7 (April 1984).

30. *Id.* at BYLAWS Sec. 6-6.

31. *Id.* at BYLAWS Sec. 6-8(b).

32. *Id.* at BYLAWS Sec. 6-5(d).

33. *Id.* at BYLAWS Sec. 6-10(d).

34. *Id.* at BYLAWS Sec. 6-10(c).

35. See Vernon & Zimmer, *The Demand for Legal Education: 1984 and the Future*, 35 J. LEGAL EDUC. 261 (1985). [Professor Dekanal read and commented on an early version of the Report.]

36. See *supra* note 13.

37. See Bezanson, *The Myths of Formalism*, 69 IOWA L.REV. 957 (1984).