

says Professor Gilmore, "after-acquired property interests of any other type are, as a matter of state law, antecedent debt transfers."<sup>41</sup> Not so, any more than it is implied that transfers of property not after-acquired, or transfers to one who is not a secured party are necessarily antecedent debt transfers. Indeed, two pages further on, Professor Gilmore refers to a type of transfer which may or may not fall within the two types described in section 9-108: the substitution of new collateral for old collateral of equivalent value.<sup>42</sup> Here he forgets his "necessary implication" and makes no suggestion that section 9-108 seeks to reverse the pre-Code cases holding such transfers not preferential.

Enough has been said to demonstrate that the reviewer read the work. Read it with respect, and with interest and profit. It remains only to repeat what was said at the outset: the work is important, and it is well done. It is not as unreliable as an oracle, but one can pick a nit or two if one tries. The discussion makes adequate disclosure when it stands on shaky ground; with all faults, it will be hard to surpass. For the present, this is the one indispensable treatise for a lawyer who advises on Code security interests.

ROBERT BRAUCHER\*

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<sup>41</sup> § 45.6 at 1313.

<sup>42</sup> *Id.* at 1315.

\* Professor of Law, Harvard University.

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**Lawyers in the Making.**<sup>1</sup> SEYMOUR WARKOV & JOSEPH ZELAN. Chicago: Aldine Publishing Company, 1965. Pp. xxii, 180. \$5.00.

Would you like to know the difference between the mean LSAT (Law School Admission Test) score of salesmen's sons who contemplated law study in 1961 and the mean LSAT score of like-minded farmers' sons? If so, I can tell you: one point. The farmers' sons lead the salesmen's sons, 508 to 507.<sup>2</sup>

Can you guess how many Jewish lawyers' sons with high scores on the API (Academic Performance Index) preferred a career in medicine as compared to equally high-scoring Catholic and Protestant lawyers' sons? Probably not. The answer is 18% as against 12% for the talented scions of the other two faiths.<sup>3</sup>

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<sup>1</sup> The book, a joint publication of the National Opinion Research Center (NORC) and the American Bar Foundation, is included in the NORC's Monographs in Social Research.

<sup>2</sup> P. 21, table 1.16.

<sup>3</sup> P. 49, table 3.7.

Would you believe that the percentage of law students in Stratum I law schools with first-year grades of B+ or higher who thought their "personal contacts with faculty" were "excellent" or "good" was exactly the same as that of law students in Stratum III schools whose first-year grades were C+ or lower? The satisfaction that 53% in each category thus registered contrasts strongly with the views of the Stratum I boys with B's and B-'s, only 35% of whom could muster those complimentary characterizations.<sup>4</sup>

I hope these samplings suffice to demonstrate that the information compressed between the covers of the Warkov-Zelan monograph is truly extraordinary. I trust, however, that the reader will not jump to the conclusion that the facts they have assembled are all as inconsequential as the foregoing tid-bits. In the effort to net data of value, the meshes of the authors' questionnaires were kept fine, and, once having hauled in the facts, understandably the authors found irresistible the temptation to compile a great many of them.<sup>5</sup> Moreover, though their data may not all seem significant to law school admissions officers and committees, other people may be interested in such matters as the capabilities of farmers' sons and the relation of religion to medical career preferences. And law teachers should find that third item touching. Note how greatly the few crumbs of contact which faculties indulge their first-year students pay off in avowals of satisfaction. But enough of these preliminaries; let me report the book's purpose, how it was executed, and by whom.

The volume represents an effort to illumine the process of career selection for the law by ascertaining who among a population of college seniors intended to study law, how many of them had so intended as college freshmen, and what proportion followed up that intention by actually enrolling in law schools in the succeeding year. In accumulating the basic data, the researchers took advantage of the occasion to find out some of the characteristics of the young men, the colleges they attended, and the law schools they chose. (Women could be excluded on *de minimis* grounds; as a happy consequence "comparisons are not obscured by sex-related differences.")<sup>6</sup>

The inquiry was initiated in the spring of 1961 by the collection of a self-administered questionnaire from a sample of 33,782 seniors at 135 colleges and universities, both accredited and large nonaccredited institutions throughout the country. A follow-up questionnaire a year

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<sup>4</sup> P. 78, table 5.7.

<sup>5</sup> But, as the two questionnaires reprinted as appendices to the volume reveal, answers to many of the questions they posed were not published.

<sup>6</sup> P. 1.

later yielded 28,713 responses. This threw light on the respondents' "academic and employment circumstances during the academic year 1961-62, including the sources and kinds of financial assistance that had supported their graduate study and the plans they had made for further graduate or professional study."<sup>7</sup>

The enterprise was the work of the National Opinion Research Center (NORC). Dr. Warkov was the author not only of the monograph but also of the report on which the monograph was based (NORC Report No. 96, December, 1962); Mr. Zelan aided in the study and contributed a chapter on occupational inheritance. An Advisory Committee of the American Bar Foundation was chaired by my colleague, Vice Dean Louis A. Toepfer of the Harvard Law School, who wrote a thoughtful introduction which I can recommend as a better review of the work than this one.

Dean Toepfer takes note of the competition which the law is meeting from the other callings and is concerned by the slow growth rate of the legal profession (a point on which his essay is becoming dated). His principal disquietude, however, springs from the proposition, amply supported by the study, "that in its attractions and appeal to young people the law seems to do its fishing in restricted waters stocked largely with the product of professional families, private schools, and the upper social strata . . . [W]hen academic talent is held constant, social, economic, and religious factors and academic origins play a role which seems incompatible with the belief that equal opportunities exist for all who want to study law."<sup>8</sup>

To equalize the imbalance, Dean Toepfer would strive to produce for undergraduates a better picture of the law than they "derive from television, movies, and fiction."<sup>9</sup> And, more important, ways must be found to clear financial barriers. The study, he notes, demonstrates that "in comparison with other career and graduate study fields, the law rates low both in assistance sought and stipends granted,"<sup>10</sup> and reveals that scholarship grants in many schools seem unrelated to talent. Moreover, loan funds might do much to circumvent financial barriers if, at least, the recipients' employment expectations are such as to give them faith in their capacity to repay.

I have drawn heavily on Dean Toepfer's observations in part because

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<sup>7</sup> P. v.

<sup>8</sup> P. xviii.

<sup>9</sup> P. xx.

<sup>10</sup> *Ibid.* This situation is disclosed in chapter 6, "Financial Support for Legal Education."

they go to what seem to me the most consequential revelations of the study from the standpoint of legal education, and in part because they provide a convenient point of departure for some comment on the significance of subsequent events for the problem that Dean Toepfer has stressed. Like many social studies, the pertinence of this one has to be evaluated anew as later developments alter the conditions which it reports. Such developments have been taking place with respect to the choice of careers in the law.

The NORC study happened to have been conducted in the year which preceded the beginning of the recent rise in law school enrollments. In the fall of 1961 law school enrollments rose only 790 (or less than 2%), from 43,671 to 44,461.<sup>11</sup> This upward creep was characteristic of law school enrollments in the preceding five years, yet during those five years the percentage of male students graduating from college had risen sharply and held to a plane well above the relatively stable law school level. Then, in the fall of 1962, total law school enrollments jumped suddenly to more than 8% above the 1961-62 level, and continued to rise to a total of 65,058 in 1965, an increase of more than 46%. This past fall the rate of increase in the number of entering students was markedly lower than in the preceding four years, but we are now on the verge of that wave of students propelled into college by the population explosion that began in 1946. It seems plain that law school entering classes are not going to level off near their 1965 mark. And since dropout rates are falling, larger first-year classes mean larger law school enrollments and many more entrants to the bar.

While this process is gathering momentum, we would do well to examine the data which the Warkov-Zelan monograph has assembled concerning the students distributed among law schools classified by reference to their ability to attract high-ranking students. The authors have divided the law schools which their respondents attended into three "strata." Stratum I is comprised of those eight schools whose entering students included in the study had the highest median Law School Admission Test (LSAT) scores (the lowest median in this stratum being 572). Stratum II takes the next sixteen schools (their lowest median being 485), and Stratum III gathers in the residue, one

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<sup>11</sup> I have drawn the data concerning law school enrollments from the tables "Law School Registration, 1961," 14 J. LEGAL ED. 254 (1961) and "Law School Registration, 1965," 18 J. LEGAL ED. 197 (1965). These tables are compiled annually by J. G. Hervey of the Section of Legal Education and Admissions to the Bar, American Bar Association. In introductory notes, he reports that information is wholly missing for some law schools. These are chiefly unaccredited schools, and my impression is that their total enrollment would not exceed 1,000. The comparisons of data are my own.

hundred schools in number.<sup>12</sup> How do the latter schools differ from the Stratum I schools in respects measured by the NORC study?

Of the students covered by the study, Stratum I law schools had 58% who had achieved high (top 20%) scores on the Academic Performance Index (API);<sup>13</sup> Stratum II, 24%; and Stratum III, 18%. On the other hand, the distribution of low (bottom half) API scores was 3% for Stratum I, 24% for Stratum II, and 73% for Stratum III.<sup>14</sup> The students who came from "Class A" quality undergraduate schools<sup>15</sup> represented 51% of the student samples for Stratum I schools, as compared to 16% and 7% respectively for the Stratum II and III schools samples.<sup>16</sup> Students applying from "Class A" undergraduate schools apparently were more likely to be admitted to Stratum I schools even when their LSAT scores were below 600 and their rivals from B, C, and D colleges had scores of 600 or more.<sup>17</sup> "High" API scores were recorded by 64% of the students in the Stratum I schools, as compared to only 23% and 12% of the students in the Stratum II and III schools.<sup>18</sup> Stratum I students also tended to come from families with higher incomes, and their parents' educational backgrounds were better.<sup>19</sup>

In their first year of law study, a high proportion of the students in the Stratum I and II schools thought the "caliber of classroom teaching," the "curriculum and course offerings," the "facilities and opportunities for research," and the "caliber of the students" were "excellent" or "good." Among Stratum III schools, the proportion making such ratings was distinctly lower. But in rating the "knowledge and professional standing of the faculty," the proportion of Stratum III

<sup>12</sup> P. 55. Of the 1,103 students in the study who enrolled in law schools, 26% entered Stratum I schools; 30%, Stratum II; and 44%, Stratum III. P. 54, table 4.1. Some calculations of mine indicate that in 1961 the total number in Stratum I and II schools was probably less than 15% and 25% respectively. See note 22 *infra*.

<sup>13</sup> "Using the mean score of a sample of entering 1959 freshmen on the National Merit Scholarship Corporation Qualifying Test, Davis and Bradburn ranked 114 of the 135 schools in the sample (Davis, 1964, pp. 26-31). This ranking was used to adjust the reported grade point average. The result is an Academic Performance Index (API) that divides the students into three groups: the top fifth, above average, and the bottom half." P. 8.

<sup>14</sup> P. 56, table 4.2.

<sup>15</sup> Numerous references are made throughout the study to A, B, C, and D "schools," i.e., colleges and undergraduate departments in universities, "as measured by the School Quality Index." P. 9. Nowhere is that index described. Two tables refer to schools in terms of Levels I-IV (Tables 1.17 and 1.20), with only the following indication of the basis of classification: Level I schools are "highly productive of students who end up with the doctorate." P. 15.

<sup>16</sup> P. 69, table 5.2.

<sup>17</sup> Pp. 60-61, table 4.7.

<sup>18</sup> P. 68, table 5.2.

<sup>19</sup> Pp. 66-67, table 5.1.

students who accorded the "excellent" or "good" accolade approached the Stratum II and III schools,<sup>20</sup> and, rather surprisingly, a distinctly higher proportion of Stratum III students rated "personal contacts with the faculty" as "excellent" or "good."

I am sure that not a few of the Stratum III law schools are well-regarded institutions which have fallen into this category merely because they are under political or economic compulsion to admit applicants whose standing, measured by LSAT scores, is low. This pulls their median down, and so, by the authors' test, they are ranked below the Stratum II schools. Nevertheless, even when allowance is made for the inclusion of these schools in Stratum III, the fact remains that the student bodies of a substantial proportion of American law schools fall well below the student bodies of, say, the top third of our schools, at least if one uses as a measuring rod those intellectual qualities that are registered by LSAT scores, API ratings, and the standings of the colleges the students attended. Even if the faculties and curricula of these law schools were equal in quality to, say, the Stratum I schools, their educational product would inevitably be inferior. This is peculiarly true of the product of a system of instruction that places as much dependence on the student's self-instruction as does the case system.

If this qualitative difference in legal education is significant, surely expanding enrollments have increased its quantitative importance. The rapid swelling of enrollments has not taken place in Stratum I schools. I do not know which schools placed among NORC's top eight, but I have selected ten schools I believe to have high admission standards as well as the ability to resist local pressures. These ten schools enrolled 6,225 students in 1961; by 1965, their total had risen by only 788 to 7,013—not quite 12.7%. This means, of course, that the bulk of the 46% increase in enrollments in the 1961-65 period had to be absorbed by the Stratum II and III schools. These schools had, respectively, 30% and 44% of the students whose replies NORC received. My own calculations lead me to believe that their actual shares of all law school enrollments must come closer to 25% and 65% respectively.<sup>21</sup>

Since Stratum I schools are expanding enrollments at a rate only about one fourth that of all law schools, their tighter admissions stan-

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<sup>20</sup> Pp. 71-75, table 5.4. The lowest point in these ratings reached by Stratum III schools related to the students' evaluation of their fellow students. An interdisciplinary observation by the author merits quotation: "It comes as a distinct surprise to this former graduate student of sociology to discover that entering law students overwhelmingly endorse the caliber of classroom teaching to which they are exposed." P. 73.

<sup>21</sup> See note 22 *infra*.

dards will be reflected in higher median LSAT scores; moreover, there will be considerable spill-over of high and above-average students (by this test) to Stratum II schools. Clearly the latter have been expanding more rapidly than Stratum I schools, many of them doubtless being state universities which often cannot be as selective in admissions as privately endowed schools. A group of sixteen schools which seemed to me likely candidates for Stratum II registered a 50% increase in total enrollments from 1961 to 1965<sup>22</sup>—a rate of increase four times that of my hypothetical Stratum I and even higher than the 46% increase experienced by all schools. Almost surely, therefore, the selection process will leave an increasing share of the less qualified students for the Stratum III schools. As a consequence, the gap between the strata will widen, unless, of course, there is an offsetting increase in the quality of all law students as judged by the study's criteria.

As to this point, the NORC study does not provide much basis for speculation. One fact it demonstrates plainly: being a lawyer's son predisposes one to the study of law.<sup>23</sup> However, the supply of lawyers' sons is limited. The occupational values declared by those choosing law in 1961 throw little light on the relative academic abilities of those choosing law today or in the future. The study found that:

[F]uture lawyers consider the following values important: making a lot of money; a chance to help others and to be useful to society; freedom from supervision; and an opportunity to work with people. In contrast to non-lawyers, they attach less importance to originality and creativity, avoidance of a high-pressure job, and the need for steady progress rather than a boom-or-bust career.<sup>24</sup>

Does the fact that law has been favored by young men who are brighter than the average suggest that the expansion has been coming from this group? The study found that the 878 college students who decided after their freshman year to seek legal careers ranked somewhat higher academically than the 674 who defected, though distinctly below the 916 who had chosen law from the start.<sup>25</sup> But one cannot gauge the extent to which the 1961 pattern is preserved by the larger number of those who today are switching to law and the probable

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<sup>22</sup> Enrollments in these schools moved from 9,412 in 1961 to 14,164 in 1965, an increase of 4,752. In 1961, enrollments in the law schools in my three hypothetical strata amounted to 14%, 21%, and 65%; in 1965, to 10.7%, 23.3%, and 66%.

<sup>23</sup> Pp. 43-44, table 3.1. 35% of lawyers' sons indicated a preference for law in their senior year, compared to 5% of the sons of non-lawyers. *Ibid.*

<sup>24</sup> P. 12.

<sup>25</sup> P. 9, table 1.8.

smaller number who are defecting. Any such reckoning must take into account the growing—and better financed—appeal of graduate education in the arts and sciences that has become evident in recent years. The vocational appeal of college teaching has grown apace.

My guess is that much of the growth in law school enrollments is coming from students who fall into middle and lower ranges according to the qualitative tests which the study employs: LSAT scores, API ratings, and rankings of colleges attended. In making this guess, I am influenced by a proposition advanced by Dean Toepfer, not in his introduction, but rather in a recent conversation. Law, he submitted, is the graduate study of choice for the undecided. None of the career alternatives offered by the other graduate and professional schools open as wide a career range as the law. Today, he suspects, more than the usual proportion of college seniors are undecided, and law study affords a more congenial mode of deferring decisions than does military service.

Want of clear career preferences is not inconsistent with high academic standing, but certainly it does not attest it. Acceptance of Dean Toepfer's thesis reinforces my suspicion that the academic quality of law students is falling as their numbers rise.

This is, I suppose, to be deplored, but I suggest that it raises two questions. The first asks how important academic quality, as measured by the NORC yardsticks, is to a socially useful, personally rewarding career at the bar? It is, of course, a valuable aid to achieving such a career in certain types of law practice, such as that dissected in Smigel's *Wall Street Lawyer*. But surely many of the qualities that are especially valued in the Wall Street lawyer are not essential to the able performance of most of the lawyer's professional duties or to the conscientious discharge of his professional responsibilities. Personal characteristics of initiative, industry, common sense, and the ability to empathize and communicate may be of as great, or greater, importance to lawyers in many branches of law practice as abilities to analyze a complex statute, impose order on a straggling line of cases, or draft an intricate document.

My second question is whether law schools have adequately adapted their curricula and methodologies to the differentiation in law students which the NORC study reveals and which current trends are probably accentuating. I believe they have not done so, though I suspect that in fact there has long been more differentiation between the instruction offered in law schools in Stratum II and that offered in schools in the lower half of Stratum III than would appear from a comparison of

catalogs. But have the differences in instruction been sufficiently adapted to meet the professional needs of the students enrolled in the latter schools? This I doubt. My impression is that what tends to develop instead is a diluted form of the instruction purveyed in Stratum I schools. Most casebooks used are devised for Stratum I students, and the instructional methods employed rest on assumptions as to student quality, motivation, and freedom from other demands which are not valid for many Stratum III schools. These schools thus may be missing an opportunity to devise a type of training better fitted to the needs not only of their students, but also of the communities that those students eventually will serve.<sup>26</sup>

DAVID P. CAVERS\*

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<sup>26</sup> A much needed study of the institutional and pedagogical problems to which the above paragraph relates is the study of the part-time law school, currently being conducted by Professor Charles Kelso of Indiana University. The relevance of his study may extend well beyond the special category of law school to which it is directed.

\* Fessenden Professor of Law, Harvard University.

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