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# THE LEGAL EDUCATION OF CHICANO STUDENTS: A STUDY IN MUTUAL ACCOMMODATION AND CULTURAL CONFLICT

LEO M. ROMERO\*, RICHARD DELGADO\*\*, and CRUZ REYNOSO\*\*\*

## INTRODUCTION

Before the advent of minority programs, the world of law schools, law students, and law teachers was in a state of relatively stable, if uneasy, equilibrium.<sup>1</sup> Several well-qualified applicants vied for each place in an entering class.<sup>2</sup> Once admitted, students were expected to apply themselves diligently to the study of the standard subjects of the legal curriculum and to respond with intelligent versions of the conventional answers when called upon to recite in class.<sup>3</sup> Those

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1. For example, the Presidential Address delivered at the General Meeting of the Association of American Law schools, in Chicago, Illinois, on December 28, 1965 (Miller, *Law Schools in the Great Society*, 18 J. Legal Ed. 247 (1965)) declared:

Many people have tried to assess the implication of the student riots. . . . As far as I know, nothing like them has occurred in law schools. . . . I do not detect any kind of political unrest among our law students. . . . In most of our schools the classroom relations between students and faculty are good. Perhaps our students recognize also that there are overriding professional interests outside the school.

*Id.* at 253. The address centered around such problems as the high cost of legal education, *id.* at 248, faculty teaching load, *id.* at 252, and faculty salaries and the cost of living, *id.* at 254. The speaker observed that "[t]he principal areas of faculty interest in law school government are curriculum and faculty personnel. On a lesser level is admissions." *Id.* at 255.

The speech concludes:

Fortunately for us our problems exist within a narrow compass. We can patch up, and we can do a lot as individuals. . . . The times have been good to us. Many recruits are coming to us as law students and teachers. Other men in the profession are seeking our guidance. A law teacher can build a good life for himself. . . . Legal education never had it so good. Let us not spoil it.

*Id.* at 256.

2. See, e.g., Hughes, McKay, & Winograd, *The Disadvantaged Student and Preparation for Legal Education: The NYU Experience*, 1970 U. Tol. L. Rev. 701, 708; compare the growth in law school enrollment figure cited in Hervey, *Law School Registration, 1964*, 17 J. Legal Ed. 209 (1964) with Hervey, *Law School Registration, 1966* 19 J. Legal Ed. 200 (1966). In recent years, of course, the press of applicants has even increased, and top schools may receive ten or even twenty applicants for each available slot. E.g., Ass'n of Am. L. Schools & L. School Admission Council, *Prelaw Handbook: Official Law School Guide, 1973-1974*, 17-18 (1973). As early as 1967, the press of applicants was increasing greatly, see Miller, *Personality Differences and Student Survival in Law Schools*, 19 J. Legal Ed. 460, 460 (1967); but the rate of attrition was still high. *Id.*

3. E.g., Gellhorn, *The Second and Third Years of Law Study*, 17 J. Legal Ed. 1, 1-2

who could not, or would not, conform to their prescribed roles dropped out, flunked out, or were encouraged to think about alternative careers.<sup>4</sup> The rate of change and innovation was slow and orderly. Little, if any, radical restructuring of the legal curriculum had been made since Langdell had introduced the case method a century earlier.<sup>5</sup>

The rate of change began to quicken in the mid-1960's. The national political drama of blacks in the South who, during the civil rights movement of the 1960's, could find few local black lawyers to represent them against physical and economic abuse focused attention on the failure of law schools to educate sufficient numbers of minority attorneys. The fruitless initial efforts of the federally funded legal services programs to find Chicano, Puerto Rican, and other minority lawyers increased the sense of anger and frustration in these communities. Identifiable minority groups, such as Chicanos, demanded lawyers belonging to their groups to whom they could turn in their struggles for equal justice and equal economic opportunity.<sup>6</sup> The failure of law schools to train minority lawyers thus gained national attention.<sup>7</sup> This concern served as a catalyst for reform movements that had been slowly building,<sup>8</sup> and in the space of a few years, law schools were experimenting with flexible admissions standards, summer programs, and new courses tailored to the special needs and interests of minority students.

By 1973, however, only seven percent of the total law school enrollment of 106,102 consisted of minority students. Chicanos numbered 1,259 or approximately one percent.<sup>9</sup> Minority communities have seen these low percentages as a token beginning, at best.

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(1964). For a brief description of legal education stressing its traditional nature and links with the past, see K. Redden, *So You Want to Become a Lawyer* 79-82 (1951).

4. E.g., Bell, *Black Students in White Law Schools: The Ordeal and the Opportunity*, 1970 *Tol. L. Rev.* 539, points out that:

[A]t some of the most highly regarded law schools the number of applicants exceed the number of admissions by so substantial a margin that the quality of students accepted is so high many of them could learn the law if the school merely provided them with the books.

*Id.* at 555. But such an approach to education would be inappropriate for minority students, Bell suggests, *id.* at 554-55, and should not be used as "an excuse for reluctantly admitting . . . students in September and then ruthlessly flunking them out the following May. . . ." *Id.* at 555.

5. E.g., Gellhorn, *supra* note 3, at 1-2. Langdell's theory of the "case" method is set out in C. Langdell, *A Selection of Cases on the Law of Contracts* vii (2d ed. 1879).

6. See note 44 *infra*.

7. O'Neil, *Preferential Admissions: Equalizing Access to Legal Education*, 1970 *U. Tol. L. Rev.* 281, 300.

8. *Id.* at 333-34.

9. Rudd & White, *Legal Education and Professional Statistics 1973-74*, 26 *J. Legal Ed.* 342-43 (1974).

But in the last year or two the very programs which have permitted a modest degree of progress in minority enrollment figures have come under sharp attack.<sup>10</sup> Already, the rate of increase of minorities enrolling in law schools is slowing.<sup>11</sup>

This seems an appropriate time, therefore, to review and reflect upon the effect such programs have had on minority legal education. This Article focuses on students from one ethnic group—Chicanos or Mexican-Americans—and of the impact this group has had on schools of law. After a brief review of the development of special admissions programs, the Article examines the Chicano law student, his background, and his adaptation to law school. The article will conclude with the responses law schools have made to Chicano and other minority students, ranging from curricular changes to the adoption of special educational programs. Throughout this article, the focus will be on the need for mutual accommodation if law schools are to succeed in training Chicano lawyers.

#### ADMISSIONS

Most faculties cannot agree whether law schools, as institutions, have an obligation to train Chicano and other minority lawyers.<sup>12</sup> Nevertheless, while that basic question has gone unresolved, most law schools have voluntarily chosen to implement changes which have permitted increased minority enrollment.<sup>13</sup> In this section we examine those changes and review their impact.

##### A. Recruitment

By the late 1960's, virtually all vestiges of overt discrimination in the law school admissions process had been removed.<sup>14</sup> The admis-

10. See, e.g., the legal challenge to the University of Washington School of Law's minority admissions program in *DeFunis v. Odegaard*, 82 Wash.2d 11, 507 P.2d 1169 (1973), *vacated and remanded*, 416 U.S. 312 (1974); *Symposium: DeFunis: The Road Not Taken*, 60 Va. L. Rev. 917-1012 (1974); Comment, *But Some Animals Are More Equal Than Others: A Look at the Equal Protection Argument Against Minority Preferences*, 12 Duq. L. Rev. 580 (1974); Ely, *The Constitutionality of Reverse Racial Discrimination*, 41 U. Chi. L. Rev. 723 (1974); *Symposium*, 3 Black L.J. 222-278 (1973); Totenberg, *Discriminating to End Discrimination*, N.Y. Times, Apr. 14, 1974 (magazine), at 8; Address by William R. Anderson, Law School Admission Council Annual Meeting, June 6, 1974; H. Breland, *DeFunis Revisited: A Psychometric View* (Educ. Testing Serv. Mimeo 1974).

11. Am. Ass'n of Law Schools (AALS) Section on Minority Groups Newsletter, Number 74-1, May, 1974, at 4.

12. See generally, *Symposium: Disadvantaged Students and Legal Education—Programs for Affirmative Action*, 1970 Tol. L. Rev. 277-986. Cf. n. 56, *infra*.

13. See, e.g., Reiss, *The Minority Student Program at the University of Southern California Law Center*, 44 S. Cal. L. Rev. 714 (1971).

14. *Sweatt v. Painter*, 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1949); AALS Section on Minority Groups Newsletter, No. 74, May 1974.

sion criteria most commonly used—scores on the Law School Admission Test (LSAT) and undergraduate grade point average (GPA)—purported to be racially and ethnically neutral. Yet those criteria produced students who were nearly all Anglo and middle or upper class.<sup>15</sup>

The initial efforts of the law schools to alleviate this imbalance focused on recruitment. The expectations were not grand in scale—after all, the “feeders,” the undergraduate colleges and universities, were not graduating great numbers of Chicanos. Nonetheless, since the problem was the absence of minorities, the answer seemed to be to recruit more minority undergraduate applicants.

One of the initial recruitment programs dispelled any notion that Chicanos were not interested in attending law school or that those interested could not be located. In 1968 the Council on Legal Education Opportunity (CLEO) launched an intensive two-month recruitment program in preparation for its planned summer institutes in Los Angeles. The sponsoring Los Angeles law schools—the University of California at Los Angeles, the University of Southern California, and Loyola—undertook the task of recruitment. Publicity in college newspapers and in newspapers of general circulation stressed (1) the institutes’ willingness to overlook traditional admissions criteria, (2) the streamlining of application procedures, and (3) the administering of the LSAT free of charge. Over 300 applicants, including 93 Chicanos, applied for the 42 positions. Fourteen Chicanos were admitted.<sup>17</sup>

Recent CLEO figures indicate that the interest of minorities in attending law school has not waned. In 1973, for example, the national office of CLEO received 2,097 applications for 232 positions, a ratio of nearly ten applications for every position. Of the total number of applicants, 373, or 17.8 percent, were Chicanos.<sup>18</sup>

Continued effort to increase the number of Chicanos in law school has produced an increasing, yet small, number of Chicanos: from 180 in 1968,<sup>19</sup> when many such efforts began, to 881 in 1971<sup>20</sup> and to

15. In 1969-1970, of a total of 82,041 students enrolled in American Bar Association accredited law schools, only 2,933 were minorities. The minority count included traditionally Black schools. See ABA Law Schools and Bar Admission Requirements (1971), at 44. For a description of minority enrollment in a private law school before the institution of special programs, see Reiss, *supra* note 13, at 716.

17. Letwin, *Some Perspectives on Minority Access to Legal Education*, 2 Experiment & Innovation 1 (1969).

18. Letter from Michael J. Moorehead, Executive Director, CLEO, to Trinidad Gonzales, Puerto Rican Legal Defense and Education Fund, Oct. 3, 1973, on file at CLEO Nat'l Office, 818 18th St. N.W., Suite 940, Wash., D.C.

19. Letwin, *supra* note 17, at 10.

20. AALS, *1971 Survey of Minority Group Students in Legal Education*, 24 J. Legal Ed. 487, 488 (1972).

1,259 in 1973,<sup>21</sup> the last year for which figures are available. Still, Chicanos in 1973 represented scarcely more than one percent of the 106,102<sup>22</sup> law students enrolled in accredited law schools.

Those schools that have increased the enrollment of Chicanos substantially have done so as a result of well-planned recruitment programs such as those sponsored and coordinated by CLEO.<sup>23</sup> Many schools do little planning and even less financing of such programs, however.<sup>24</sup> A law school need only examine the undergraduate athletic recruitment program to be convinced that the issue is one of priorities. If minority applicants were sought with the same enthusiasm and attention devoted to place-kickers or halfbacks, much of the problem would disappear in short order.

The best efforts at recruiting will falter, however, if schools fail to recognize that recruitment is only the first of several steps which must be taken. Financial assistance for those who need it must be provided.<sup>25</sup> Chicano families are often poor,<sup>26</sup> and the Chicano who

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21. Rudd & White, *supra* note 9, at 342-44.

22. *Id.* at 342. At that time more than three per cent of the total population of the United States was Chicano, according to a press release from the U.S. Dept. of Comm. News, Social and Economic Statistical Admin. (May 10, 1974).

23. While no law school will have athletic department type financing, it can plan and execute recruitment plans with the same care as an athletic department. What are the ingredients? (1) assigning of recruitment responsibility to specific individuals. Such individuals should include administrators (dean, assistant dean, etc.), professors, and students. However, one individual should be appointed as over-all coordinator; (2) setting of goals and priorities respecting the number and types of students to be recruited. The goals must be realistically based on past experience and present resources; (3) coordination and information sharing by all the individuals and groups involved in the recruitment effort; (4) financing of telephone, stationery, and travel for students, faculty, or alumni utilized in the recruitment; (5) utilization of minority students and faculty as well as nonminority recruiters; recruitment should not be carried out exclusively by minority personnel; and (6) periodic review of progress.

24. Student-initiated recruitment programs partially fill the void. At the University of New Mexico, the students and the law school administration work cooperatively. The recruitment activities of students are like those found in many law schools. The Mexican American Law Student Association (MALSA) sponsors an annual Chicano recruitment day to reach as many applicants as possible. Posters and all news media are utilized. At the recruitment day and throughout the year, MALSA distributes information and counsels students on the LSAT sources for financial assistance, and admissions problems. MALSA makes recommendations to the admissions committee respecting those applicants who have been interviewed or are otherwise known to the MALSA membership.

More recently, the national La Raza Law Students Association designated its New Mexico chapter (MALSA) to establish the National Clearinghouse for Law School Applicants (hereinafter Clearinghouse). The Clearinghouse will attempt to share applications by Chicanos with all law schools. Nat'l Clearing House for Law School Applicants, Final Report to ABA-LSD, April 20, 1975, on file at University of New Mexico School of Law. Most Chicano applications are made to a few law schools. Other schools have no Chicano applicants. In 1975 118 of 217 applicants in the program were Chicano or Puerto Rican. *Id.*

25. After the 1968 Los Angeles CLEO Institute, the Director recommended that the annual stipend should be \$2,500 per student, rather than the \$1,500 then awarded. Letwin, *supra* note 17, at 19. Yet, despite extensive efforts to increase funding, CLEO has only been

manages to graduate from college often has acquired substantial educational debts.<sup>27</sup> Second, a substantial number of those recruited must be admitted, trained, graduated, and equipped for the bar exam. Recruitment will be viewed as a hoax if it does not result in increased numbers of Chicano law graduates and attorneys. Successful recruitment, therefore, must be followed by successful education of Chicanos after the students enroll.<sup>28</sup> Those being recruited hear and read about how other Chicanos are doing in school. The reputation of the law school regarding minorities spreads throughout that segment of the minority communities which is concerned about enrolling in law school. If a law school has a reputation for failing minority students, whether deservedly or not, it will receive few minority applicants regardless of its recruitment efforts.

### B. *Special Admissions Program*

Although active recruiting quickly confirmed the attractiveness of the legal profession to racial and ethnic groups, a second obstacle to enrolling minority students appeared: the numerical admission criteria applied by most law schools. Relatively fewer Chicanos than Anglos were achieving the requisite Law School Admission Test score and undergraduate grade point average to gain admission to law school on a competitive basis.<sup>29</sup>

This obstacle, however, need never have appeared.<sup>30</sup> The Law School Admission Council, recognizing that the LSAT cannot measure many qualities that are essential to a good lawyer, such as motivation, intelligence, industriousness, and a sense of justice, had urged law schools "to make intelligent and flexible, rather than slavish, use of numerical predictors."<sup>31</sup> Broadening the base of admissions criteria to include nonnumerical factors has the additional

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able to award an annual stipend of \$1,000 for the last several years. Many schools have approached the financial needs of the students in an ad hoc and unstructured manner often leaving those needs unmet.

26. See United States Comm'n on Civil Rights, *The Mexican-American* 2-5 (1968).

27. Sander, *Financial Aid*, 1970 U. Tol. L. Rev. 919, 920-21.

28. See notes 142-275 *infra*, and accompanying text for a discussion of various programs.

29. Rosen, *Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Criteria*, 1970 Tol. L. Rev. 321, 325.

30. Raushenbush, *Broadening the Base of Persons Entering the Legal Profession: Recruitment and Admission to Law School*, AALS Section on Minority Groups Newsletter, Number 74-1, May, 1974, at 1.

31. *Id.* at 3. At New Mexico, for example, no student today would be admitted routinely who has an LSAT score of 529 or 549, the average score for incoming students in 1968 and 1969, respectively. For a list of LSAT scores from 1964 to 1972, see Prepared Statement of Frederick M. Hart, offered to the University Study Committee of the New Mexico Legislature, July 20, 1973, p. 3 on file in the office of the Dean, University of New Mexico School of Law.

value of assuring the law school that its student body will have the variety and depth that the legal profession needs. But even if Chicanos in special programs have lower numerical predictors than others, it is important to realize that a few years ago, most such students would have been admitted without special programs.<sup>32</sup> It is the recent, extraordinary increase in law school applicants<sup>33</sup> and the concurrent upward spiral of numerical predictors that necessitates reevaluation of special admissions programs.

Thus, the need for more broad-based criteria is evident. There is also a need to experiment with innovative ways to afford minorities an opportunity to demonstrate competence for school and for practice. The following sections review several programs, and the concluding section of this part proposes a theory of admission which meets the objections that can be leveled at today's procedures.

### 1. *The University of Denver College of Law Program*

The population of the Rocky Mountain area of the United States contains a high proportion of Chicanos. Nonetheless, few Chicano attorneys practice in that region. For example, while 40 percent of the population in New Mexico is Chicano,<sup>34</sup> only seven percent of the attorneys have Spanish surnames.<sup>35</sup> In response to such disparities, the University of Denver College of Law established in 1967 the first special admissions program for Chicanos.<sup>36</sup>

The program planners assumed the need for more Chicano lawyers and recognized that numerical admissions criteria severely limited the

32. Most of the Chicano students admitted through special programs are qualified for the study of law according to the predictive indexes used by most law schools. For example, the University of New Mexico School of Law uses a formula based on the Law School Admission Test (LSAT) score, Writing Ability score, and undergraduate grade point average to predict the first year grade point average in law school. Any applicant whose predicted first year average (PFYA) exceeds 2.0 (C average) has a better than 50% chance of fully completing the first year at the University of New Mexico School of Law. The validity of this formula has been annually tested against the actual grades earned by the students at UNM to ensure its statistical accuracy. The Chicano law students accepted for the 1977 class by the University of New Mexico, with one or two exceptions, have a PFYA above 2.0, and, thus, are qualified for the study of law. The one or two exceptions had successfully completed a summer pre-law program (CLEO). The experience of New Mexico is that successful completion of such a program is an additional basis for predicting success in law school.

33. See generally Ruud, *That Burgeoning Law School-Enrollment is Portia*, 60 A.B.A. J. 182 (1974).

34. U.S. Dept. of Commerce, Bureau of the Census, General Social and Economic Characteristics of New Mexico, PC(11)-C33.

35. A poll of the 1974 N.M. Bar list indicated the number of Spanish-surnamed lawyers.

36. In 1967, only .005 percent of the lawyers in Denver were Chicano, although Chicanos constituted 8 to 9 percent of the population. Sykes & Martinez, *Some Lessons of CLEO*, 1970 U. Tol. L. Rev. 679, at 680-81. The personal experience of the authors has shown that such figures are hard to come by because bar associations refuse to gather such data.



opportunity for a legal education.<sup>37</sup> Accordingly, the program was designed with components now familiar. First, students were admitted to the program on the basis of criteria different from those applied to other first year students.<sup>38</sup> Students were selected who, while strong academically, lacked the requisite LSAT score to be otherwise admitted. Their backgrounds indicated a desire to do well in school, the probability that they would succeed, and a willingness to use the law as a means of protecting the legal rights of minorities. Approximately three times more students applied than could be accepted.<sup>39</sup>

Second, a nine-week summer program was attended by all special admittees. The faculty assumed that each student had the intelligence to perform well in law school.<sup>40</sup> Consequently, instruction centered on a realistic simulation of law school modified to the needs of these students. Special emphasis was placed on contact with professors, small classes, written assignments, and frequent practice examinations.<sup>41</sup>

Ten Chicanos enrolled in the program. What was the result of that experiment? All ten successfully completed law school, two on an accelerated 2½ year program, eight in the normal three years. Two are now private practitioners. Two are legal aid attorneys, one the executive director of a large rural legal services program and the other a staff attorney in an urban program. Two are with the Equal Employment Opportunity Commission, one an assistant to a Commissioner and the other a staff attorney in an EEOC litigation center. One is a deputy clerk of the United States Supreme Court, and one is a law professor and assistant dean.<sup>42</sup> Each of these Chicanos would not have attended law school under established numerical predictive criteria. Each had strong motivation to succeed, each continues to better the life of the Chicano community professionally, and each is making a distinct contribution to society.

Interviews with Chicano students attending the second Denver program suggest that similar results are likely. Most of these students identify strongly with their ethnic group and appear determined to work to make existing social institutions more responsive to the needs of the Chicano community.<sup>43</sup>

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37. *Id.* at 680-81.

38. Huff, *The Propriety of Preparatory Programs for Minority Students*, 1970 U. Tol. L. Rev. 747, 752.

39. Sykes & Martinez, *supra* note 36.

40. *Id.* at 750.

41. *Id.* at 749-752.

42. Interview with Jess Manzanares, Asst. Dean, University of Denver College of Law, June, 1974, Denver, Colo.

43. Sykes & Martinez, *supra* note 36, at 681-87.

## 2. Council on Legal Education Opportunity (CLEO)

Success of a nature similar to that of the Denver program, but on a larger scale, has been achieved by CLEO since it was established in January 1968. One example of what CLEO has done may suffice. California Rural Legal Assistance (CRLA), a 40-attorney legal services program serving the rural poor, represents predominantly farm worker clients, approximately 60 percent of whom are Spanish speaking. To properly serve its clients, CRLA must have attorneys who speak Spanish and with whom that portion of the clientele can identify. In 1968, the year CLEO began, only three attorneys in the program were Chicano despite extensive recruitment efforts. By 1973, fully one-half of the attorneys were Chicano. Most of the new attorneys had gone through CLEO or other special admissions programs.<sup>44</sup>

The basic aim of CLEO has been to facilitate a substantial increase in the number of lawyers from minority backgrounds. Since its inception, the program has emphasized summer institutes and financial stipends.

The impact of CLEO has been remarkable. By 1973, approximately 1,300 students had gained admission to law school after attending CLEO regional institutes. Of the CLEO graduates, over 400 had graduated from law school by 1973.<sup>45</sup> In addition, CLEO has continually urged law schools to admit minority applicants who were not admitted to CLEO institutes either because the positions were filled or because some applicants were overqualified financially or educationally for the CLEO program.

The effect of CLEO on the admission of Chicanos to law school goes beyond the numerical impact of its graduates, however. First, the success of CLEO-graduated Chicanos in law school has encouraged other Chicanos to apply to law school. With a larger pool of Chicano applicants, a greater number of Chicanos qualify for admission under the traditional predictive criteria today than in 1968. Second, and more important, while some law schools initially viewed CLEO applicants as poor risks for success in law school, the vast majority have succeeded. As a result, law schools have become more willing to admit Chicanos whose credentials exceed the CLEO

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44. Advisory client groups consulted with and advised the attorneys in each of the nine offices found throughout rural California. These client groups had, since CRLA was established in 1966, demanded Chicano lawyers at every opportunity. The need had always been there. The legal profession had failed to meet that need. To those clients, the special admissions program, like CLEO, had the special quality of fulfilling the needs and, importantly, dreams.

45. Raushenbush, *supra* note 30, at 2.

standard but are not high enough for them to be admitted on a regular basis.

### 3. Other Programs

Many law schools have devised other admissions programs that do not rely principally on CLEO. The three examples discussed below are illustrative of a combination of approaches that have been built on the CLEO experience but which have gone beyond that approach. They have been successful efforts, but in view of the small percentage of Chicano law students and lawyers, more must be done in order to meet the need.

The *DeFunis*<sup>46</sup> case has focused attention on the issue of admissions at the University of Washington, a public institution. The admissions process involved separation of the applicants into two groups: minority and nonminority.<sup>47</sup> Each group of applicants was considered separately; the minority applicants competed only against other minority applicants. For minority applicants, both the traditional criteria, LSAT and GPA, and the "soft" criteria such as recommendations, community activity, and employment were considered. While not setting an absolute percentage of minority students to be admitted, the University of Washington selected those minority applicants the admissions committee felt had a good chance of succeeding in law school even though there were some Anglo applicants, like DeFunis, who had better numerical credentials. The University did succeed in increasing the number of minority students despite the problems inherent in the process. The basic rationale for the program was the need for a greater number of minority lawyers, including Chicanos. This position was accepted by the Supreme Court of the State of Washington, and in view of the lack of a decision by the Supreme Court of the United States, the Washington Supreme Court decision stands as the most authoritative court opinion on the issue.<sup>48</sup>

The efforts of a private institution, the University of Southern California (USC), to increase the number of minority students, including Chicanos, are detailed in a 1971 article by Associate Professor Michael Reiss.<sup>49</sup> Despite pressures on the law school to integrate its nearly all-Anglo student body, few steps had been taken in that

46. *DeFunis v. Odegaard*, 82 Wash. 2d 11, 507 P.2d 1169 (1973); *vacated and remanded* 416 U.S. 312 (1974).

47. The admissions process is described in the Washington Supreme Court opinion. 82 Wash. 2d 11, 507 P.2d 1169 (1973).

48. The U.S. Supreme Court vacated and remanded the case as moot without reaching the merits. 416 U.S. 312 (1974).

49. Reiss, *supra* note 13.

direction until 1968 when CLEO provided the impetus.<sup>50</sup> The University of Southern California, as part of a consortium, helped sponsor CLEO institutes in 1968 and 1969. In 1970, however, CLEO did not sponsor an institute in the Los Angeles area, and USC had to devise its own program of admissions.<sup>51</sup> A special committee that worked with and sometimes against the normal admissions committee was established. During the tug of war that ensued, the special committee became more respectful of normal predictive factors, and the regular admissions committee became more impressed with the need for diversity in the student body. There was a gradual increase in the number of minorities from 1968. Although many of the students initially admitted did comparatively poorer academically, by 1971 the minority students were competing favorably with other students at the law school.<sup>52</sup> Moreover, the difference in treatment, other than in admissions, had practically disappeared. There were no special tutorial programs. More importantly, the number of minority students in the incoming class had risen from none in 1968 to near population parity by 1971.<sup>53</sup>

The affirmative efforts to recruit Chicanos into the University of New Mexico Law School date from 1967, when New Mexico accepted several graduates of the Denver program. Since 1967, the University of New Mexico School of Law has accepted an increasing number of Chicanos who have attended CLEO institutes. These students were admitted to the law school provisionally, subject to successful completion of the CLEO institute. More recently, a substantial percentage of Chicanos have been admitted without the benefit of a special summer program. This has been due in part to the adoption of an admissions policy that considers the traditional predictive factors such as the LSAT score to be only part, although an important part, of the admissions criteria. In applying such a policy to all applicants, the admissions committee looks for evidence of social commitment, leadership ability, and participation in extra-curricular activities. By this method, the University of New Mexico has been able to admit increasing numbers of Chicanos who do not attend pre-law summer programs, but who might not be accepted on a strictly numerical basis.

These experiences suggest approaches that could be successfully applied by law schools that seek to admit larger numbers of minorities, including Chicanos; some of these are detailed in the next sec-

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50. *Id.* at 716-719.

51. *Id.* at 732.

52. *Id.* at 730.

53. *Id.* at 722.

tion. Law schools can no longer depend on CLEO to increase their minority enrollment.<sup>54</sup> The number of CLEO positions has stabilized around 200. Thus, it is unrealistic for law schools to tie their minority admissions system to CLEO. Additional programs must supplement CLEO if minority enrollment is to increase sufficiently to meet the need for minority lawyers.

### C. *Toward a Unitary Theory of Admissions*

Special admissions programs have succeeded in increasing the number of minority law students, but at some cost. The use of different admissions standards suggests to both the special and regular admittee that the minority students are enrolled at the sufferance of the law school. Moreover, some Anglo students may feel that the Chicano student admitted under a special program deprived a friend or relative of a position in the entering class.<sup>55</sup>

Stigma is a high cost, but it can be avoided if different standards for minority applicants are abandoned. To abandon different standards for a minority admissions program will necessitate a change in traditional admissions policy, however. The notion of competitive admissions on the basis of numerical predictors can no longer be accepted as the touchstone of an admissions policy. Other factors deserve and demand consideration in the admissions process. One such factor is the responsibility of law schools to train students who belong to different ethnic and racial groups.<sup>56</sup> Another factor that

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54. CLEO has embarked upon a pilot program to assist law schools in recruiting minority students through the Application-Sharing Project. Over fourteen schools that receive comparatively large numbers of minority and Appalachian applicants have agreed to direct applications of qualified students who have not been admitted. Other schools, that do not have large numbers of such applicants, have indicated through a confidential questionnaire the type of applications they would like to receive. By pairing responses, schools may find students not admitted elsewhere. Interested schools contact the applicant directly. AALS Section on Minority Groups Newsletter, Number 74-1, May, 1974, at 1.

55. In 1970-71, the Chicano law students at the University of California at Berkeley focused on a series of demands with respect to the Chicano. One of the demands was that the law school institute what the students called a "unitary admissions system." The Chicano law students were concerned that an environment of distrust and suspicion was being created by a system of admission that brought into the law schools most of the Chicanos as "special admittees." These students more often than not, had lower LSAT scores than their Anglo counterparts. The Chicano students rejected what they felt was the law school position, *i.e.*, that the student was there, not because of merit, but because of the pressures to admit minority students. The Chicano students further sensed that some majority member students felt that the increasing number of brown faces in the student body was the cause of the inability of some of their friends and relatives to get into law school. The Chicano students did not want to continue to be stigmatized in this manner. This account is based upon the personal experience of one of the authors who was asked to attend the negotiations.

56. In the view of the authors, this responsibility lies not so much in terms of fairness to the individual applicants, as in the responsibility of the law school to society as a whole and to the ethnic and racial groups in particular.

deserves consideration is the need for diversity in the educational environment. More fundamentally, law schools must accept that numerical predictive factors only predict probable success in law school and not probable success as a lawyer.<sup>57</sup>

Does a unitary admissions policy mean the abandonment of CLEO and other similar programs? Certainly not for the immediate future. Each school must examine its progress with respect to its responsibility to provide equal educational opportunity to identifiable minorities including Chicanos. Its policies must be evaluated and its resources expended to fill any gap that exists between its present attainment and its future responsibility.

If law schools are willing to accept the limitations inherent in the use of numerical predictors, it is possible to establish a unitary admissions system that will permit the admission of minority applicants on the same basis as nonminority students. Such a system must proceed on the assumption that the relative probability of success in law school is not the sole criterion of admission. Rather, all who are predicted to succeed in law school would be considered qualified.<sup>58</sup> In selecting from among the qualified students, the law schools would consider such policies as geographic and social diversity and the need for minority lawyers, as well as the need for some students with the highest predictions for success in law school. That the LSAT score or GPA differs among the incoming students should be no more important than the fact that they come from different geographic areas. All students must be admitted on the same basis—probability of success in law school and the contribution they can make to the legal profession and society.

Implementation of the unitary admissions system imposes at least two costs, one financial and the other administrative. The financial cost results from the increased time required in reviewing applicant files. It is, of course, easier to look at one number for each applicant. The administrative cost is not so easily measured. The admissions dean or committee will agonize over decisions when more factors than numerical predictors are considered because there is less certainty in the system.

But the benefits argue for the system. The legal profession will be enhanced. Admissions personnel, once freed of complete dependence on numerical predictors, can take a broader view of the needs of the legal profession. If most applicants who would be admitted on

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57. Law School Admission Council, *LSAT Handbook*, 5-6 (1964).

58. Care must be exercised in the use of numerical predictors for this purpose. The "cut off" must be set at a level that takes into account the experience of CLEO and other programs.

numerical criteria come from one geographic area, or racial or ethnic group, or one sex, the admissions personnel can consider other factors as criteria for admission. In time, when the students become lawyers, all segments of society will be represented in the bench and bar.

### THE CHICANO LAW STUDENT

This section seeks to make some tentative generalizations about the responses of Chicano students to the study of law. It assumes the existence of a core of cultural values which most Chicanos share to some degree<sup>59</sup> and which many Chicano young people bring with them to law school. These shared values and attitudes affect their adaptation to law school in ways that are, to a large extent, a function of their culture.<sup>60</sup> In making this assumption, we by no means are suggesting that all Chicano law students' responses to the study of law are exactly alike. As social scientists have discovered, generalizations about numerically large, widely dispersed groups are notoriously difficult and inexact.<sup>61</sup> Chicanos, as individuals,<sup>62</sup> vary widely in their make-up, personality, and aptitude for the study of law. Some are highly Anglicized and scarcely differentiable in their law school experience from the rest of the law school population.<sup>63</sup>

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59. Although Chicanos are a heterogeneous, widely dispersed group, nevertheless they possess a common bond of cultural identity. United States Comm'n on Civil Rights, *The Mexican-American* 1-2, 66 (1968); Reynoso, Alvarez, Moreno, Olmos, Quintero, & Soria, *La Raza, The Law, and the Law Schools*, 1970 U. Tol. L. Rev. 809, 810 [hereinafter cited as Reynoso]; see Ramirez, *Identity Crisis in the Barrios*, in Pain & Promise: The Chicano Today 57 (E. Simmen, ed. 1972); see generally *Spanish-Speaking People in the United States*, in Proceedings of the 1968 Annual Spring Meeting, American Ethnographical Society (J. Helm, ed. 1968) [hereinafter cited as Proceedings].

60. See notes 68-81 *infra*, and accompanying text.

61. See Weaver, *Sampling and Generalization in Anthropological Research on Spanish-Speaking Groups*, in Proceedings, *supra* note 59, at 1.

62. The tendency of some schools to see minority students as representatives of their race, and thus always "on stage" can be a major cause of friction. See Graglia, *Special Admissions of the "Culturally Deprived" to Law School*, 119 U. Pa. L. Rev. 351 (1970). Other schools consider all minority students, even those with excellent credentials, as potential failures, and require their participation in compulsory remedial programs, tutorials, etc., that may be neither needed nor desired. See notes 258-63 *infra*, and accompanying text. For a study of the deleterious effects on the morale of Black students of this practice, see Leonard, *Foreward, Symposium on The Black Lawyer in America Today*, 22 Harv. Law School Bull., Feb. 1971, at 7; Bell, *The Black Lawyer in Legal Education*, *id.* at 26. Although there is a voluminous literature on the problems of Black law students in white schools, the entire literature on Chicano law students comprises fewer than a half dozen articles. Despite marked differences between the backgrounds and experiences of Black and Chicano students it will occasionally be useful to compare various features of their interactions with schools of law.

63. See Weaver, *supra* note 61, at 10; notes 105-110 *infra*, and accompanying text.

Others retain strong ties with their native language and culture.<sup>64</sup> Moreover, there may be wide differences between Chicanos raised in migrant camps<sup>65</sup> and those who have grown up in city barrios.<sup>66</sup> And differences may be geographical or generational; the experience of the Chicano student from Houston may differ significantly from that of the Chicano from Los Angeles or Denver, and the cultural experience of the fourth-generation Chicano may be different from that of the Chicano whose parents have recently arrived from Mexico.<sup>67</sup> Nevertheless, within broad limits it appears that some generalizations can be made. This section and the next strive to set out some of these in the belief that an understanding of some of the attitudes and qualities shared by many Chicano law students can be of assistance to those who are concerned with the success of minority student programs in schools of law. Following this, a rough typology of Chicano law students is offered. Then, a narrative account is given describing some of the typical experiences Chicano students have in law schools, and, in the final part a number of suggestions are made for ways in which schools and students may meet each other's legitimate expectations more fully than at present.

#### A. Cultural Values

Chicano students come from many backgrounds. Of central importance, both numerically and for the purposes of this analysis, are those who have been born and raised in predominantly Chicano neighborhoods, or barrios. Barrio residents perceive "the law" differently from the way it is perceived by most Anglo Americans.<sup>68</sup> This perception enables the Chicano law student to contribute unique insights into the way the law operates in present-day society. Indeed, the hope that minority students will contribute new dimensions to the classroom dialogue is one of the more frequently suggested justifications for minority admissions programs.<sup>69</sup>

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64. Weaver, *supra* note 61 at 1-12; Reynoso, *supra* note 59, at 809, 817-18; Sykes and Martinez, *supra* note 36, at 682. See generally Ramirez, *supra* note 59.

65. For an ethnological description of Chicano migrant farm worker families, see Shannon, *The Study of Migrants as Members of Social Systems*, in Proceedings, *supra* note 59, at 34.

66. For an ethnological description of Chicano families in big-city barrios, see Goodman, *Child's Eye View of Life in an Urban Barrio*, in Proceedings, *supra* note 59, at 84.

67. Penalosa, *The Changing Mexican-American in Southern California*, in Pain & Promise: The Chicano Today 61, 61-62 (E. Simmen, ed. 1972); see generally Proceedings, *supra* note 59.

68. See notes 70-81 *infra*, and accompanying text.

69. Pinderhughes, *Increasing Minority Group Students in Law Schools: The Rationale and the Critical Issues*, 20 Buff. L. Rev. 447 (1971); cf. Burns, *Racism and American Law: A New Course in Legal History*, 1970 U. Tol. L. Rev. 903, 905; O'Neil, *Preferential Admis-*



Chicano society prefers to obtain compliance with behavioral norms not primarily by written laws enforced by police power, but by family and community pressure and a shared respect for such values as old age and authority.<sup>70</sup> In Spanish-American culture, a man's word is as good as law;<sup>71</sup> only a person "sin verguenza"<sup>72</sup> would refuse to carry out a promise or to honor an obligation.<sup>73</sup> Such cases, when they arise, are ordinarily dealt with by social ostracism, rather than by resort to formal legal processes.<sup>74</sup>

When the legal processes operate in the barrio, "the law" is often identified with some of the least attractive aspects of its enforcement function.<sup>75</sup> In the barrio resident's mind, "the law" is frequently personified by the towering Anglo policeman who treats him contemptuously because of his foreign manner and appearance, and his halting English.<sup>76</sup> "The law" also means the bail bondsman, the sheriff, and the process server. Unlike the image of the helpful policeman that many Anglo children carry,<sup>77</sup> Chicano children learn to fear the policeman as a representative of an alien and hurtful system.

The Chicano community's perception of the law has influenced its perception of the lawyer. Thus, the Anglo attorney, along with the Anglo merchant, judge, process server, and policeman, has come to be associated with evictions, repossessions, incarcerations, and other personal misfortunes. In some areas of the Southwest, this impression is strengthened by memories of connivance by Anglo attorneys

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sions: *Equalizing the Access of Minority Groups to Higher Education*, 80 Yale L.J. 699, 762 (1971). See also Leleiko, *Legal Education—Some Crucial Frontiers*, 23 J. Legal Ed. 502, 519-20 (1971).

70. Kritsche, *The Anglo Side of Acculturation*, in Proceedings, *supra* note 59, at 178, 187; United States Comm'n on Civil Rights, *Stranger in One's Land* 7 (1970). See generally A. Rendon, *Chicano Manifesto* 32 (1971).

71. Kritsche, *supra* note 70, at 187; S. Steiner, *La Raza: The Mexican-Americans* 59 (1970); A. Rendon, *supra* note 70, at 27-32.

72. Literally, "man without shame." The concept of shame plays a more central role in Chicano than Anglo culture. An accusation of shamelessness is one of the most serious charges that can be leveled at the character or motivation of another person.

73. Kritsche, *supra* note 70, at 187; cf. United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 7, 26; A. Rendon, *supra* note 70, at 27-32.

74. Kritsche, *supra* note 70, at 187; cf. United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 15, 21.

75. A. Rendon, *supra* note 70, at 217-40 (1971); see United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 38; United States Comm'n on Civil Rights, *The Mexican-American*, *supra* note 59, at 15-18; Reynoso, *supra* note 59, at 818-22; see generally, Swett, *Cultural Bias in the American Legal System*, 4 L. & Soc. Rev. 79, 89-93 (1969); cf. Carl & Callahan, *Negroes and the Law*, 17 J. Legal Ed. 250 (1964).

76. United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 41-42; United States Comm'n on Civil Rights, *The Mexican-American*, *supra* note 59, at 15-18; see S. Steiner, *supra* note 71, at 161-72 (1972).

77. A. Coffey, E. Eldefonso & W. Hartinger, *Human Relations: Law Enforcement in a Changing Community* 166-67 (1971).

with government officials in the plundering of land-grant property.<sup>78</sup> Nor do Chicanos, in contrast to Blacks, have many lawyer-heroes such as Justice Thurgood Marshall; the crusading attorneys who made such an impact on behalf of the civil rights of Negroes have barely begun to make their appearance in the barrio.<sup>79</sup> It is no surprise, then, that, until recently, few Chicano students perceived the law as a means of advancing the interests of their people.

The Chicano law student may subconsciously fear that his cultural values are threatened by the law school experience. Law schools appear to weed out a disproportionate percentage of those who are concerned with people and who value harmonious human contact.<sup>80</sup> The Chicano places great value on those traits and the Chicano law student may fear that the sacrifice of these traits is the price for success in law school, that law school will somehow make him "less Chicano."<sup>81</sup>

### B. Educational Background

The Chicano who comes to law school has typically attended high schools that are academically inferior,<sup>82</sup> underfinanced,<sup>83</sup> and often ethnically segregated.<sup>84</sup> Perhaps even more important is the nature of the education received by Chicano youth in many public schools. Chicanos are generally subjected to curricula, textbooks, and

78. Petition of Antonio Maria Pico, et al., to the Senate and House of Representatives of the United States, reprinted in *Foreigners in their Native Land; Historical Roots of the Mexican Americans* 195, 196-97 (D. Weber, ed. 1973); S. Steiner, *supra* note 71, at 58-59 (1969).

79. Reynoso, *supra* note 59, at 809, 815-16. For example, although the United States Attorney General has intervened in a number of cases involving Negroes, until recently there have been few such interventions on behalf of Chicanos. United States Comm'n on Civil Rights, *Stranger in One's Land* *supra* note 70, at 42. In the past few years, organizations such as MALDEF (Mexican American Legal Defense and Educational Fund) and CRLA (California Rural Legal Assistance) have made a modest beginning toward remedying the worst of this deficiency.

80. See Miller, *supra* note 2 for the view that law school weeds out aspiring lawyers who are concerned with people, who value harmonious human contacts, who are friendly and tactful, and instead rewards students who are aggressively cerebral. For a view contrasting Anglo-American and Mexican-American concepts of law and lawyers, see S. Steiner, *supra* note 71, at 59-60.

81. See Sykes & Martinez, *supra* note 36, at 683-84; cf. Bell, *supra* note 4, at 547-49.

82. Penalosa, *supra* note 67, at 68; Note, 1 N.M. L. Rev. 335 (1974); see A. Rendon, *supra* note 70, at 191-215; Montoya, *Bilingual-Bicultural Education: Making Educational Opportunities Available to National Origin Minority Students*, 61 Geo. L. J. 991, 992-94 (1973); O'Neil, *supra* note 69, at 728-37; see also United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 23-29.

83. See e.g., *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973); A. Rendon, *supra* note 70, at 210.

84. United States Comm'n on Civil Rights, *The Mexican-American*, *supra* note 59, at 5, 9, 33; see O'Neil, *supra* note 69, at 728-37.

teachers that are not attuned to the Chicano culture.<sup>85</sup> The subjects taught reflect the dominant Anglo culture and frequently are not relevant to the experience, culture, or interests of the Chicano student. These subjects are often taught by Anglo teachers who cannot present the material in a way that the Chicano students can easily comprehend.<sup>86</sup> These difficulties are compounded when the Chicano students' primary language is Spanish. The lack of ability and resources on the part of schools to educate the Chicanos accounts for the low educational achievement of Chicanos<sup>87</sup> and suggests that Chicanos have not had equal educational opportunity.<sup>88</sup> In fact, such failures on the part of public schools were considered to be a denial of equal protection under the United States Constitution in *Serna v. Portales Municipal Schools*.<sup>89</sup> To remedy these deficiencies in the school system, bilingual education, hiring of Mexican-American teachers, and the introduction of subject matter relevant to Chicanos were required.<sup>90</sup>

Because Chicanos are frequently educated in a system that is not sympathetic to their needs, many drop out before completing high school;<sup>91</sup> those who remain have often been advised by counselors to "learn something practical," such as mechanics or carpentry.<sup>92</sup> Those Chicanos who graduate from high school and attend college frequently enroll in local institutions<sup>93</sup> where they select courses of instruction leading to careers such as teaching and social work. Those who opt for law generally present paper credentials, including grade

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85. Note, *supra* note 82, at 337.

86. *Id.*

87. *Id.* at 335; U.S. Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 23.

88. *Id.* at 348-49. See also *United States v. Jefferson County Bd. of Education*, 372 F.2d 836 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5th Cir. 1967), *cert. denied sub nom.*, *Bd. of Education of The City of Bessemer v. United States*, 389 U.S. 840 (1967); *Hobson v. Hansen*, 269 F.Supp. 401 (D.D.C. 1967), *aff'd sub nom. Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

89. 351 F.Supp. 1279 (D. N.M. 1972), *aff'd on other grounds*, 499 F.2d 1147 (10th Cir. 1974).

90. Order (unreported), *Serna v. Portales Municipal Schools* (1974). 351 F.Supp. 1279 (D.N.M. 1972), *aff'd* 499 F.2d 1147 (1974).

91. United States Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 70, at 23 (1970).

92. *Id.* at 24-25; United States Comm'n on Civil Rights, *The Mexican-American* 34 (1968); Macias, *The Chicano Movement*, in *Pain & Promise: The Chicano Today* 137, 141 (E. Simmen, ed. 1972).

93. *Cf. United States Comm'n on Civil Rights, Stranger in One's Land*, *supra* note 70, at 23-29; O'Neil, *supra* note 69, at 728-37.

point averages<sup>94</sup> and LSAT scores,<sup>95</sup> that do not compete favorably with those of the top Anglo students.

There are exceptions, of course. Just as the Blacks have their outstanding jurists and legal scholars, the Chicano community occasionally produces the kind of student Derrick Bell has so ably described<sup>96</sup> and that professors love: intensely competitive, intellectually able, and determined to beat the Anglo at his own game. The ranks of Chicano lawyers boast several such men, and their numbers are increasing. But the occasional appearance of such an exceptional creature should not be permitted to conceal that he is indeed a rarity, as he is in all minority groups.<sup>97</sup>

### C. A Rough Typology

Despite the formidable effect of the screening factors mentioned above, a modest but increasing number of Chicano students are finding their way into our schools of law.<sup>98</sup> As one might expect, these tend to be rather exceptional young people. A substantial number of these have been "community leaders," young men and women who have been active in their barrios and towns and who have experience at political organizing.<sup>99</sup> Intensely involved with the cause of social justice, these students tend to see law school pragmatically, as a brief interlude from which they will emerge with new tools to apply to the

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94. Cf. sources and pages cited in note 93, *supra*.

95. Swineford, *Law School Admission Test: Comparison of Black Candidates and Chicano Candidates with White Candidates*, in Summary of LSAT Research (Mar. 1972).

The existence of such a "credentials gap" by no means implies that Chicano students are unqualified for the study of law. Many, if not most, of the Chicano students are qualified for the study of law according to the predictive indexes used by most law schools. For example, the University of New Mexico School of Law uses a formula based on the Law School Admission Test (LSAT) score, Writing Ability score, and undergraduate grade point average to predict the first year grade point average in law school. Any applicant whose predictive first year average (PFYA) exceeds 2.0 (C average) has a better than 50 percent chance of success at the University of New Mexico School of Law. The validity of this formula has been annually tested against the actual grades earned by the students at UNM to ensure its statistical accuracy. Most of the Chicano law students accepted for the 1977 class by the University of New Mexico have a PFYA above 2.0, and, thus, are qualified for the study of law.

According to the Admissions Committee of the University of New Mexico School of Law, many of the Chicano applicants accepted for the fall of 1974 would have been admitted on a competitive basis five years earlier.

96. Bell, *supra* note 4, at 545.

97. See Carl & Callahan, *supra* note 75, at 250.

98. Rudd, *supra* note 33, at 183, reporting that from 1972 to 1973, enrollment of Chicanos in law schools increased by 17.7 percent. In the fall of 1973, 1259 Chicanos were enrolled in accredited schools. Rudd & White, *supra* note 9, at 344.

99. See sources cited note 64 *supra*.

struggle. This type of student often, but not always, aspires to an eventual career in politics.<sup>100</sup>

A second and growing group of Chicano law students is composed of those who have grown up in homes that are bicultural.<sup>101</sup> They may have lived in poor-to-middle-class integrated neighborhoods or, if from the barrio, have been exposed to both Chicano and Anglo cultures. In essence, their culture is a blend of both. As a consequence, most of the students in this group do not bring with them to law school a serious cultural conflict. Rather, they seem at ease with, and close to, their Chicano culture while at the same time they are no more intimidated by the uniqueness of the law school experience than most first-year students.

A third substantial group of Chicano law students consists of upwardly mobile, industrious, somewhat Anglicized individuals who see in a legal career a means of acquiring prestige, status, and a respectable income.<sup>102</sup> Often the product of hard-working middle- or lower-middle-class families<sup>103</sup> who place great emphasis on "getting ahead" through education,<sup>104</sup> these students have often achieved good records at the undergraduate level. Their industriousness has won them the favor of their teachers throughout their years in school; the teachers see in them the personification of the American dream of social advancement through education and hard work.<sup>105</sup> These more "assimilated" students may experience an

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100. See Sykes & Martinez, *supra* note 36, at 684.

101. This typology is based upon the collective experiences of the authors both as teachers in law schools with a significant number of Chicano law students and as teachers and administrators in CLEO institutes with substantial numbers of Chicano participants.

102. A desire for a high income is frequently associated with low identification with La Raza issues. Sykes & Martinez, *supra* note 36, at 685. See also Rendon, *supra* note 70, at 46-47.

Governmental and institutional employers are often attracted to such individuals, whom they see as "safe" candidates. See Braithwaite, *The Black Lawyer in Government*, 22 Harv. L. School Bull. 49 (Feb. 1971). At least one observer has warned that law schools interested in attracting minority students who will return to their communities after graduation, see notes 131-32 *infra*, and accompanying text, should scrutinize carefully the motivations of the applicant from an extremely impoverished background, since such a candidate may see in a legal career only a way of escaping financial destitution and show little concern for his community. Pinderhughes, *supra* note 69, at 449.

103. See Ladinsky, *The Impact of Social Background of Lawyers on Law Practice and the Law*, 16 J. Legal Ed. 127, 130-31 (1963).

104. See, e.g., Rodriguez, *Speak Up, Chicano*, in Pain & Promise: The Chicano Today 214, 216 (E. Simmen, ed. 1972); *Tio Taco is Dead*, in *id.* 122, 125-26. Unfortunately, such hopes are in many cases doomed to disappointment. Because of demands from within their own group as well as constraints imposed by discriminatory attitudes in the larger society, success-oriented Chicanos are frequently limited in the extent to which they are able to take advantage of educational and occupational opportunities. An investment in education simply doesn't pay off as well for the Chicano as for the Anglo. Shannon, *supra* note 65, at 34, 52.

internal conflict when exposed to the missionary zeal and intense ethnic loyalty of the "community leader" type<sup>106</sup> or the pride that the bicultural student has in the Chicano culture. Half-forgotten ties and memories are reawakened. Several reactions may occur. The most common reaction is to seek to reestablish ties to the Chicano community; this often includes a reevaluation of career plans. A second reaction, less common today, is to reject involvement in the Chicano community. Some may react by wholeheartedly immersing themselves in everything Chicano, idealizing things that are Chicano and rejecting that which is perceived as Anglo.

A smaller group (at most law schools) is composed of persons of Spanish surname but upper-middle-class background, often having an Anglo parent, who, though Chicano for purposes of admission to law school, are virtually indistinguishable in their attitudes and goals from the mass of Anglo students.<sup>107</sup> These students frequently have superior academic records, often close to the range of applicants who are regularly admitted. Their motivations differ little from those of their Anglo counterparts; some may wish to enter corporate practice, others may aspire to a career in teaching or government. Relatively few members of this group have any deep attachment to the Chicano community or experience divided loyalties while in law school. Those who plan to devote themselves to working with the poor after graduation, as in a legal services office, generally do so out of a commitment that is more intellectual than based on longstanding ties.

Other typologies than the above could, of course, be delineated. Chicano students can be compared with respect to a number of other variables, such as geographical origin and economic or generational status.<sup>108</sup> But, for understanding the student's struggle to adjust to

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105. S. Persons, *American Minds: A History of Ideas* 40-43 (1958).

106. See Leonard, *Placement and the Minority Student: New Pressures and Old Hang-ups*, 1970 U. Tol. L. Rev. 583, 585. See generally Moore, *Social Class, Assimilation and Acculturation*, in Proceedings, *supra* note 59, at 19, 20-21; note 81 *supra* and accompanying text; Ramirez, *supra* note 59, at 57.

107. For the view that law schools often prefer to admit minority individuals in this category in order to avoid facing the necessity of radically reforming their curriculum and teaching approach, see Reynoso, *supra* note 59, at 840-41. See also Bailey, *Trying to Make it Real Compared to What?*, 1970 U. Tol. L. Rev. 615. Schools who follow this practice, however, rarely find that the individuals recruited are able to bring to their classes the infusion of fresh insights that is one of the principal objectives of affirmative admissions programs. To the extent the school succeeds in recruiting Chicanos who are at ease with the Anglo world and likely to require few radical changes on the part of the institution, it denies itself an important avenue for cross-cultural enrichment. See also Rendon, *supra* note 70, at 46-48.

108. See notes 62-67 *supra*, and accompanying text. See also *Tío Taco is Dead*, in Pain & Promise, *supra* note 104, at 122-24.

law school, an approach that focuses on ethnic background and degree of assimilation has considerable explanatory power. It is useful for this purpose because one of the prime determinants of the Chicano student's success or failure at law study, we believe, is the ease or difficulty with which he learns to function in a system dominated by Anglo-American values and thought patterns. The law school must be sensitive to these differences and recognize its responsibilities to make those institutional changes that will enhance the possibility of success in law school of students with non-Anglo cultural backgrounds.

#### *D. The Law School Experience*

##### *1. The First Semester*

When the Chicano student arrives at law school, upperclassmen, and perhaps pre-law advisors, have forewarned the student that law study is highly demanding and will require great amounts of time.<sup>109</sup> But the feature that causes the greatest anxiety is one about which he has not been fully alerted—the Socratic method.<sup>110</sup> From the first day, the Chicano sees his classmates required to recite in class, notices their discomfiture and the professor's continued probing, and wonders how he will perform when his name is called, as it eventually is. Little in his experience has prepared the Chicano student for the demands the Socratic dialogue places on him. The abstract level of discourse,<sup>111</sup> the conceptual traps,<sup>112</sup> and the pro-

109. The grapevine is very effective at conveying such messages. Students who have attended a CLEO institute during the summer preceding admission to law school of course have first-hand knowledge of this aspect of law school.

110. Devised by Dean Langdell of Harvard Law School almost a century ago, the Socratic method as practiced by most schools of law involves a formalized dialectic in which the student is required to recite cases, distinguish holdings, and apply legal rules to borderline situations. See C. Langdell, *supra* note 5, at vii. Today, the designation refers to a whole spectrum of instructional approaches, ranging from a very "pure" question-and-answer approach to more eclectic mixtures of lecturing, recitation, and problem-solving.

111. See, e.g., Note, *Anxiety and the First Semester of Law School*, 1968 Wis. L. Rev. 1201, 1206.

112. For a sharply critical, and perhaps somewhat exaggerated discussion of the traps Socratic law professors spring on unwary students see Savoy, *Toward a New Politics of Legal Education*, 79 Yale L.J. 444, 457 (1970). Chicanos are easy prey, for most have little experience with the type of precise communication that is called for in the Socratic dialogue. See Huff, *supra* note 38, at 750. The "community leader" has had a good deal of experience at public speaking and political advocacy, but typically his experience with presenting an unadorned defense of a purely analytical position is slight.

It should be borne in mind that the generalizations about the Chicano experience made herein represent only a rough average, or composite, of the experience of many individuals, and that individual cases may vary widely from the scenarios offered here. Concerning the inherent difficulty of making accurate statements about ethnic groups, individual members of which may differ in many significant respects, see notes 61-67 *supra*, and accompanying text.

fessor's deliberate refusal to give feedback<sup>113</sup> are difficult enough. But the Anglo student experiences these uncertainties, too.

What makes the Socratic experience such a painful one for the Chicano is not so much the intellectual demands it places on him, as the symbolic and emotional quality of the performance. Verbal aggression is discouraged in Chicano culture. Young people are taught to be conciliatory, even deferential, in the face of authority.<sup>114</sup> The professor's probing may be seen as an attack, and his continued questioning as relentless pursuit from which there is no escape.<sup>115</sup> The student's careful preparation, his meticulous briefing of the cases the night before, seem useless in the fact of the professor's parade of hypotheticals.

The shock of being called on to recite and the lack of positive reinforcement in the Socratic method inspires a variety of escape maneuvers.<sup>116</sup> The student learns to duck questions, to say he is "unprepared" when called on (which may not be true), or to volunteer with a trivial, off-the-point insight in hopes the professor will remember that he volunteered and choose not to call on him when his turn comes. In the absence of positive feedback, the Chicano student may begin to doubt his ability or suitability for law.<sup>117</sup> He

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113. The lack of feedback, which has been decried by many commentators, e.g., Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. Cin. L. Rev. 93, 123, 161 (1968); Note, *supra* note 111, at 1201, is especially unsettling for minority students, who are by virtue of their "special" status in school unsure of where they stand. See O'Neil, *supra* note 69, at 762.

114. Goodman, *supra* note 66, at 84, 91, 95-96; see United States Comm'n on Civil Rights, *supra* note 26, at 61. In the barrio, this reluctance to respond to attacks from authority figures often takes the form of intentional relinquishment of legal rights, rather than "making a fuss," *id.* at 15. Growing numbers of Chicano students have learned to surmount their early conditioning, particularly in instances where the authority figure is viewed as illegitimate or antagonistic to the interests of their people. The "community leader" in particular can be a very articulate spokesman in meetings and public forums. Still, his public speaking ability is likely to be at its best in delivering speeches with a socio-political cast; when pressed on a purely abstract level on points of law, he is much less sure of himself, and is more likely to revert to a more cautious, or defensive, posture.

115. One commentator has described the Socratic approach at its best as, "forceful, scathing, and aggressive," Stone, *Legal Education on the Couch*, 85 Harv. L. Rev. 392 (1971). Another has detailed the psychological destruction of a student whose inner resources were inadequate to cope with the attack of one of his teachers, Watson, *supra* note 113, at 119-20. The rationale that those who cannot tolerate the rigors of this classroom approach do not have what it takes to be a lawyer has been criticized as inappropriate for minority students. See Carl & Callahan, *supra* note 75, at 261.

116. For a discussion of the various maladaptive devices students adopt, see Watson, *supra* note 113, at 129-30; Note, *supra* note 111, at 1207.

117. As was mentioned earlier, see notes 45-46 *supra*, and accompanying text. Minority students are especially prone to such self-deprecation since their very presence at the law school marks them as "special." A low LSAT score can also perform such a harmful "labeling" function. Abuse of the Socratic method can also contribute to undermining of the student's ego strength and self-esteem. Stone, *supra* note 115, at 411-13.



may begin spending inordinate numbers of hours in the library, poring over hornbooks, commercially prepared outlines, and other study aids, in the hope that rote learning of black-letter rules will ease his dilemma.<sup>118</sup> Other students may respond by withdrawing from the stressful stimulus. They may begin attending classes sporadically, or stop attending at all.<sup>119</sup> Others may turn to community activities,<sup>120</sup> where they experience a sense of accomplishment that is generally unavailable in the classroom. The desire and evident need of the community for their legal services makes such a decision even easier.

Adding to the Chicano student's doubt about his ability to succeed in law school is his presence in a special educational program for minority students. If the program is mandatory and remedial in nature, the Chicano student may feel that he and the other program participants have been set apart in a special caste composed of the most lowly.<sup>121</sup> If the special program is supplemental in nature, however, and if the program has been successful in the past, participation in such a program may provide the Chicano student with the assurance he seeks.

By the latter part of the first semester the Chicano student will have heard of the poor record of previous Chicano graduates on the bar examination.<sup>122</sup> He wonders whether, in the end, his law degree will be worth nothing. Coupled with these uncertainties is the growing realization that law study simply is not as interesting and vital as he thought it would be. There are few dramatic civil rights cases in the first-year curriculum; to the student, an undue number of the cases seem to revolve around the problems of giant corporations or

118. Watson, *Reflections on the Teaching of Criminal Law*, 37 U. Det. L.J. 701, 712 (1960); Note, *supra* note 111, at 1207.

119. Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 1970 U. Tol. L. Rev. 377, 395 (1970); see Note, *supra* note 111, at 1214.

120. Patton, *The Student, The Situation, and Performance During the First Year of Law School*, 21 J. Legal Ed. 10, 50 (1969); Summers, *supra* note 119, at 396; see Hughes, McKay & Winograd, *supra* note 2, at 713.

121. Making available special educational resources for the minority student without at the same time making him feel stigmatized or set apart from the rest of the student body is a very delicate matter. It may well be impossible to achieve where relationships have begun to deteriorate and the student body is predisposed to perceive actions by the school as evidence of polarization. If offered a choice between having a particular compensatory program that results in stigma and no program at all, most Chicano students would choose no program. Reiss, *supra* note 13, at 731; see Bell, *supra* note 4, at 551; cf. Patton, *supra* note 120, at 61.

122. Clark, *The Bar Examination: Hurdle or Help*, in C. Clark, *Minority Opportunities in Law for Blacks, Puerto Ricans & Chicanos* 175 (1974). For detailed documentation of the differential pass rates of minority and white graduates on the California bar examination, see Memo of Points and Authorities for Plaintiff, *Espinoza v. Committee of Bar Examiners*, no. S.S. 229298 (Cal. Sup. Ct., filed June 20, 1972).

insurance companies.<sup>1 2 3</sup> An entire course seems to center about medieval nobility, fiefs, and peculiar things called "estates." Few of his professors take the time to show the connection between the assigned material and the problems of the poor community, and for some classes the Chicano wonders whether the connection can be made at all.<sup>1 2 4</sup> When midterm examinations arrive, he is required to demonstrate proficiency not only in written English, often itself a second language, but in the peculiarly ponderous, highly embroidered style that many legal writers affect.<sup>1 2 5</sup>

In response to their common dilemma, the Chicano students draw together. The competitive atmosphere is tempered by the formation of study groups and ethnic student organizations.<sup>1 2 6</sup> Tutorials are arranged, and outlines and class notes are duplicated and made avail-

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123. For a criticism of this orientation as excessively narrow and tending to exclude equally important areas of human need, see Reich, *Toward the Humanistic Study of Law*, 74 Yale L.J. 1402, 1402-07 (1964); Summers, *supra* note 119, at 390; Sykes & Martinez, *supra* note 36, at 683-84; see Hughes, McKay & Winograd, *supra* note 2, at 710; see Diggs, *Communication Skills in Legal Materials: The Howard Law School Program*, 1970 U. Tol. L. Rev. 763, 767.

124. The fear that law will prove "irrelevant" to the concerns of his people, or, worse, that its study will result in his being co-opted into a system that discriminates against the poor is a frequent cause of low morale and half-hearted efforts by minority students, e.g., Sykes & Martinez, *supra* note 36, at 683-84; see Bailey, *supra* note 107, at 615-20; Bell, *supra* note 4, at 547-49; Bok, *The Black Lawyer in America Today; Dinner Speaker*, 22 Harv. Law School Bull. 36, 37 (Feb. 1971); Leonard, *supra* note 106, at 583-87. But see Jensen, *Selection of Minority Students in Higher Education*, 1970 U. Tol. L. Rev. 403, 449 for the view that minority students complain of the irrelevance of their education simply because they are unable to do the work. A more plausible view, expressed in socio-political terms, is that of Katz, *Black Law Students in White Law Schools: Law in a Changing Society*, 1970 U. Tol. L. Rev. 589, 603. Katz suggests that the minority student's complaint that the law lacks relevance to his goals is simply a reaction against the moral neutrality of most legal education and a manifestation of the student's resistance to the prospect of becoming a mere technician or "hired gun."

125. Diggs, *supra* note 123, at 765. Despite protestations to the contrary, a student's writing style, diction, spelling, and use of rhetorical devices such as transitions correlates highly with grades received on law school essay examinations. Linn, Klein & Hart, *The Nature and Correlates of Law School Essay Grades*, 1972 Educ. & Psych. Measurement 32, 267-79.

126. Initially, the competitive nature of the law school environment inhibits student exchanges, Rickson, *Faculty Control and the Structure of Student Competition: An Analysis of the Law Student Role*, 25 J. Legal Ed. 47 (1973). Students, especially superior students, are reluctant to help other students for fear of giving them an edge. Typically, when a superior student helps another student with some aspect of the class work, he gives the struggling student a "bite" of the correct analysis, but not the whole thing. Patton, *supra* note 120, at 41. Lower-achieving students generally are driven to associate with each other, and their group work is more sporadic and less productive than that of higher achieving students. *Id.* at 41-43. Chicanos and other minority students may have an advantage over the students described in the above-cited studies, however, since their greater group cohesiveness results in greater sharing of ideas and materials and in earlier formation of study groups.

able to the group. Social gatherings provide a release from the academic pressure.

## 2. *After Graduation: The Bar Examination and a Job*

During his second and third year the threat of the bar examination hangs over the Chicano's head like a slowly gathering cloud. He has heard of the dismal record of past Chicano graduates<sup>127</sup> and wonders if the bar examiners consciously discriminate against minority test-takers.<sup>128</sup> He worries about his ability to write a written essay under intense time pressure.<sup>129</sup> What if he fails? How will he support himself for a second try? If he cannot pass the exam after a couple of tries, how can he use his legal training in some alternate capacity? How will he explain his failure to his family and community?

Even before registering for the bar exam, however, comes a more immediate trial: applying for his first legal position. Except for the "community leader," who has maintained strong ties with the community and probably has his future well planned, the Chicano student may face a difficult career choice. Often the choice is perceived as "returning to the community" on the one hand (*i.e.*, some form of poverty or public-interest practice) or opting for a commercial or corporate practice on the other.<sup>130</sup> The law school is able to offer him relatively little guidance in this decision, since it, also, is of two minds on the matter. It would like to see him devote himself to the betterment of his community; after all, that is one of the principal objectives of special admissions programs.<sup>131</sup> On the other hand, the

127. See Clark, *supra* note 122.

128. See Bell, *supra* note 4, at 547 for a discussion of the tendency of the law school environment to evoke attitudes of suspicion and distrust, verging on racial paranoia. Unfortunately, there appears to be just enough basis to the rumors of intentional discrimination to ensure their perpetuation. See, e.g., Reinstein, *Evaluating Bar Admissions Procedures Under Standards of Equal Protection*, 44 Temp. L.Q. 248; *The Report of the Philadelphia Bar Association Special Committee on Pennsylvania Bar Admissions Procedures—Racial Discrimination in Administration of the Pennsylvania Bar Examination*, *id.* at 141, 227-34.

129. See Evans & Reilly, *A Study of Speededness as a Source of Test Bias*, in Summary of LSAT Research (1971), suggesting that black candidates may experience "speededness" (*i.e.*, time pressure) as more of a handicap on reading comprehension questions than white candidates. And many minority students do have difficulties with writing standard English. Brand, *Minority Writing Problems and Law School Writing Programs*, 26 J. Legal Ed. 331 (1974).

130. Leonard, *supra* note 106, at 583-84; see Bok, *supra* note 124; Banks, *The Black Lawyer and Institutional Employment*, 22 Harv. Law School Bull. 40, 44 (Feb. 1971); cf. Bailey, *supra* note 107, at 615-20.

131. Sykes & Martinez, *supra* note 36, at 687-88; see Leonard, *supra* note 106, at 586-87; see also Pinderhughes, *supra* note 69, at 447, which recommends a social-commitment test for specially admitted students in order to help guarantee they will return to their

faculty are more attuned to the scholastic world and the world of judges and law firms. To them, a minority student who makes his mark there publicizes and vindicates the school's program to critics.<sup>132</sup> Moreover, minority communities do need tax lawyers and corporate counsel. Thus, a Chicano graduate who sharpens his skills in these areas by working a few years in the business world will later be able to bring them home for the benefit of his community.<sup>133</sup>

### INSTITUTIONAL RESPONSES

From an educational standpoint the events described above obviously leave much to be desired. Yet, from our combined experience, they are typical of the experiences of many Chicano students in our schools of law. Special admissions programs, when they result in experiences, like those described above, produce disaffection on the part of both student and law school. The law school, which had hoped to gain an infusion of new insights and creative criticism,<sup>134</sup> finds instead that it has on its hands a new kind of silent minority, tense, withdrawn, and obviously unhappy. The minority student, for his part, feels cheated. His legal education, which appeared to offer such promise, has become instead a daily ordeal.

An essential first step in addressing this obviously unhappy state of affairs is to realize that not all law students are cut from the same cloth. Chicano students bring to law study a constellation of traits and aspirations that set them apart from their Anglo, and even Black, classmates.<sup>135</sup> Viewing special admissions programs for Chicanos as simply offering the traditional product<sup>136</sup> to a class of slightly inadequate but promising proto-Anglos whose skin is simply a few shades darker than usual is an invitation to disaster. Without the

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communities when they graduate. Two writers believe that only a relatively small portion of the minority graduates of "prestige" law schools return to their communities. Gozansky & DeVito, *An Enlightened Comparison: The Relevant Strengths and Weaknesses of the CLEO Program and the Pre-Start Program of Emory University*, 1970 U. Tol. L. Rev. 719, 720.

132. See Watson, *supra* note 113, at 109; Kinoy, *Crisis in Legal Education*, in *The Radical Lawyers* 271, 275-76 (J. Black, ed. 1971).

133. See Panella & McPherson, *Do You See What I See?: Two Writers Look at CLEO*, 1970 U. Tol. L. Rev. 559, 597; Smith, *The Black Lawyer and Business and Industry*, 22 Harv. Law School Bull. 61, 62 (Feb. 1971); Whitehead, *id.* at 63-65. It has been pointed out, though, that minority communities are able to generate relatively little business for the practitioner interested in commercial practice. Summers, *supra* note 119, at 387. Others have questioned the basic wisdom of studying white institutions as models for minority communities. See Leonard, *supra* note 62, at 7.

134. *E.g.*, Hughes, McKay & Winograd, *supra* note 2, at 718; Reiss, *supra* note 13, at 733.

135. See notes 58-81 *supra*, and accompanying text.

136. This is the so-called "Jensen" view of compensatory education. See Jensen, *supra* note 124, at 455-57; Jensen, *How Much Can We Boost IQ and Scholastic Achievement?*, 39 Harv. Ed. Rev. 1 (1969).

initial acknowledgment of cultural and temperamental distinctness, little progress is likely to be made.

The presence of increased numbers of minority students thus poses a dual challenge to law schools. First, can law schools take students with nonstandard educational and cultural backgrounds and provide them with the necessary educational experiences to make them successful attorneys? Second, can they do so without adopting means that rob the schools of the benefits of cultural diversity and the infusion of fresh approaches that the newcomers can bring to their legal educations?<sup>137</sup>

It must not be forgotten, however, that at the same time that minority students pose a challenge to the ingenuity and adaptability of legal educators, they also present a unique opportunity. Many of the reforms that have been instituted in response to the needs of minority students have been ones that have benefited nonminority students as well. Until the mid-1960's, innovation in law teaching had been stunted by a combination of a steady increase in applications<sup>138</sup> resulting in admission only of "super-qualified" applicants and the traditional sink-or-swim attitude of the schools which placed the onus of accommodation on the student, rather than the educator.<sup>139</sup> As a result, many glaring deficiencies in methods, curriculum, and philosophy went unnoticed. The arrival of minority students brought these into sharp relief and provided an occasion for much-needed self-examination.<sup>140</sup> As a result the first half-decade of minority admissions has witnessed a sharp acceleration in the rate of experimentation with new curricular and instructional approaches.<sup>141</sup> This section examines a number of such approaches.

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137. This loss can come about in two ways. First, law schools, in an attempt to decrease "minority problems" can concentrate on recruiting "super-Chicanos" and "super-Blacks," students whose academic records and other paper credentials approach or exceed those of the student admitted under ordinary standards. With some exceptions, such a policy is likely to result in the acceptance of relatively Anglicized minority students, who are at home in the Anglo world, and less likely to upset the institution's routine. Second, law schools can admit a "mix" of minority students, *see* notes 98-108 *supra*, and accompanying text, but then require them to conform to the ongoing system on penalty of academic sanction. For students in schools that adhere to the latter philosophy, survival is only possible at the expense of their cultural values and ethnic identity; many are unwilling to pay this price. *See* Bell, *supra* note 4, at 547; Leonard, *supra* note 106, at 585.

138. *See* notes 1-4 *supra*, and accompanying text.

139. *See* notes 2-3 *supra*, and accompanying text.

140. In some areas, the impact of minority students on legal education has been direct and unmistakable, for example, in the adoption of special educational programs. In other areas, however, the presence of minority students has been one of a number of forces influencing the development of change. Areas where the effect of minorities has been less direct, but nevertheless significant, are curriculum, clinical programs, and teaching techniques.

141. *See* notes 5-9 *supra*, and accompanying text.

Although primary emphasis is placed on their impact on minority students, their usefulness to the institutions as a whole is manifest.

### A. Curriculum

The curriculum that Chicano law students faced at the advent of minority admissions programs in the mid-1960's had remained unchanged for years. In most law schools the curriculum emphasized commercial law and property law.<sup>142</sup> Even in courses dealing with the law of persons, primary attention was placed on the financial interests involved.<sup>143</sup>

For students who come from minority groups that have been excluded from the mainstream of economic life, a curriculum that emphasizes property interests presents a serious obstacle. Few Chicano students have acquired much familiarity with the internal functioning of the world of business. More important, Chicano students do not have the interest in such courses that would motivate them to master the subject matter.<sup>144</sup> Furthermore, the traditional curriculum appeared to minority students, and some nonminority as well, to be largely irrelevant to the actual practice of law.<sup>145</sup>

Faced with a curriculum they regarded as irrelevant, Chicano law students demanded changes. They demanded new courses, new content in presently offered courses, and new emphases in traditional courses. In response to these demands from Chicanos, and other minority students,<sup>146</sup> and in order to facilitate the education of minority students,<sup>147</sup> a number of changes in the curriculum have been made.<sup>148</sup>

Perhaps the most significant change in the curricula of law schools has been the addition of new courses responsive to the interests of minority students. Courses entitled "Civil Rights," "Poverty Law," "Racism in America," and "Law and the Consumer," are indicative

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142. Burns, *supra* note 69; see also Diggs, *supra* note 123. Diggs claims that the traditional law courses are taught from a money perspective. *Id.* at 767.

143. Diggs, *supra* note 123, at 767.

144. Gozansky & DeVito, *supra* note 131, at 732. See Reynoso, *supra* note 59, at 843. Reynoso notes a Chicano pattern of improving school work beyond the first year due to the fact that Chicano students elect courses of interest to them. See also Diggs, *supra* note 123, at 764.

145. See, e.g., Reynoso, *supra* note 59, at 837.

146. See, e.g., Law School Division of the ABA, Equal Rights Project Report (1972) that calls for reform of the law school curriculum.

147. The primary thrust and justification of curriculum reform has been the need for more relevant courses for minority law students. See generally, Bok, *supra* note 124, at 37; Burns, *supra* note 69, at 903; Gozansky & DeVito, *supra* note 131, at 732; Comment, *Current Legal Education of Minorities: A Survey*, 19 Buff. L. Rev. 639, 647, 653 (1969); Panella and McPherson, *supra* note 133, at 573-75. *Contra*, Jensen, *supra* note 124, at 449.

148. See note 140, *supra*.

of the new courses.<sup>149</sup> Casebooks have been published to facilitate teaching such courses.<sup>150</sup>

In addition to new courses, traditional courses such as contracts and property have been infused with new content that reflects the interests of minority students.<sup>151</sup> For example, landlord-tenant issues (public housing) as they affect the poor have been incorporated in property courses,<sup>152</sup> and consumer issues have been integrated into contract and commercial law courses.<sup>153</sup> Traditional courses that have not added new content have modified their perspective. Courses in family law, for example, have begun to focus on the status of illegitimacy with respect to government benefits.<sup>154</sup> Similarly, courses on corporations have begun to emphasize corporate responsibility to minority groups, the poor, and the public.<sup>155</sup> Today, almost every course includes a broader perspective and new emphasis.<sup>156</sup>

The most radical of the changes in the law school curriculum has been the addition of clinical courses. Clinical education is not only a major reform in the curriculum, it is a major reform in the method of teaching in law schools. Chicano and other minority students have responded to clinical education and pushed for its acceptance and

149. See, e.g., The University of New Mexico Bulletin for the School of Law, 1973-74. See also the survey of law school courses on poverty and related social problems in Proceedings of the National Conference on the Teaching of Anti-Poverty Law, Association of American Law Schools 209-21 (1970).

150. See, e.g., G. Cooper, P. Dodyk, C. Berger, M. Paulsen, P. Shrag & M. Sovern, Cases and Materials on Law and Poverty (1973); E. Jarmel, Legal Representation of the Poor (1972); R. Levy, T. Lewis, & P. Martin, Cases on Social Welfare and the Individual (1971); D. Bell, Race, Racism, and American Law (1974); A. Berney, J. Goldberg, J. Dooley & D. Carroll, Law and the Poor: Cases and Materials on Poverty Law (1975).

151. See *Survey of Seminars in Traditional Areas Retooled for Poor*, Proceedings of the National Conference on the Teaching of Anti-Poverty Law, *supra* note 149, at 214-16.

152. Compare, e.g., A. Casner & W. Leach, Cases and Text on Property, Part VII (1st ed. 1950), with A. Casner & W. Leach, Cases and Text on Property, Part VI (2d ed. 1969).

153. The change in title for the second edition of R. Speidel, R. Summers, & J. White, Commercial and Consumer Law (2d ed. 1974) reflects the change in content from the original book, Commercial Transactions (1969). Moreover, the authors stated in the preface to the second edition that the difference in editions is the addition of "four new chapters on protecting the consumer, mainly in credit transactions."

154. E.g., M. Paulson, W. Wadlington, & J. Goebel, Domestic Relations: Cases and Materials xvii (2d ed. 1974); see C. Foote, R. Levy, & F. Sander, Cases and Materials on Family Law 4-5 (1966).

155. See, e.g., *Preface* to D. Vagts, Basic Corporation Law (1973):

Finally, the experience (to be gained in a course in corporation law) ought to enable the student to get a firmer grasp of the corporation in the economy and society, interpreting that aspect with his overall views on politics and economics. It is, I believe, deeply important that lawyers be capable of thinking intelligently about the relationship between corporations and the public interest.

*Id.* at 1.

156. See Bell, *supra* note 62, at 30.

expansion in law schools as a credit-worthy subject.<sup>157</sup> Chicano students see clinical education as relevant to their aims in two ways. First, it advances their objectives in attending law school, *i.e.*, the acquisition of skills necessary to perform services of direct benefit to their communities. And, second, it enables them to begin immediately to provide such services to those who need them most desperately.

Clinical courses can have powerful motivational value for minority students.<sup>158</sup> The student achieves satisfaction in helping someone with a serious problem, and in receiving constructive criticism from his supervisor.<sup>159</sup> For the Chicano student, success in clinical work may be the most rewarding feature of his law school career. The traditional plums in law school, such as high grades, law review, and moot court, go to very few students. For the overwhelming majority of each law school class, there are few institutional awards that give a sense of pride or accomplishment.<sup>160</sup> Recognition by one's peers, faculty supervisors, and especially by one's client for work well done is, for most students, the only pat-on-the-back they will receive in law school.

Unfortunately, such reinforcement usually is not available in the first year of law school where attrition among Chicanos is highest. The first-year curriculum has been the least affected by the forces for change. Only a few schools have introduced clinical courses in the first year.<sup>161</sup> Inclusion of a clinical experience in the beginning of a minority student's law school career would undoubtedly spur his motivation in other courses and give him a sense of accomplishment.<sup>162</sup> Although first-year students would, of course, require greater supervision in their work with clients, it would appear that the educational and personal values to be gained by such an experience would override the additional cost and investment of instructional resources.

In addition to their educational value to the law student, clinics located in poverty areas can provide much needed legal services to a segment of the community most in need of legal counseling and representation. Of the early clinical programs, several were developed

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157. See Gozansky & DeVito, *supra* note 131, at 732; *cf.* Diggs, *supra* note 123, at 764.

158. Reynoso, *supra* note 59, at 837.

159. Romero, *Second Annual Project Report on the Dickinson School of Law Clinical Program*, 5 Council on Legal Education & Professional Responsibility (CLEPR) Newsletter, No. 9, April 1973, at 4.

160. See CLEPR, *Survey of Clinical Education 1972-1973*, at V, and Table 2.

161. Gozansky & DeVito, *supra* note 131, at 732.

162. Cochran, *Some Thoughts on Law Schools, The Legal Profession, and the Role of Students*, 1970 U. Tol. L. Rev. 623, 627-28.



in response to Chicano student demands and serve barrios located near law schools. For example, the Denver University School of Law and the University of New Mexico School of Law have criminal defense programs named "Centro Legal." Both programs were the results of the efforts of the Chicano student organizations and are primarily staffed by Chicano attorneys and Chicano students enrolled in the clinical programs. Under the supervision of the staff attorney, or faculty supervisors, the Chicano students represent clients (mostly Chicano) charged with misdemeanor offenses. These efforts at the University of New Mexico provided at first a service that would otherwise not have been available to these clients. Now in its second year, it contracts with the Public Defender Agency to provide the service.

In clinical programs that serve a largely Chicano clientele, Chicano students are uniquely qualified to perform an important role. The Mexican-American and Indian minorities are unique because of their language differences. Chicano students who can communicate with Chicano clients are frequently the only persons able to translate the client's problem into effective legal action. Trust, of course, is an additional essential element of a successful lawyer-client relationship. Chicano law students are often able to establish an immediate rapport with barrio clients, who might otherwise be reluctant to discuss a legal problem.

### *B. Teaching Methods*

With respect to methods of teaching, law schools have made but few changes in response to the challenge of educating Chicano and other minority students. Even where new courses have been added to the curriculum, traditional teaching methods are often employed. Only in clinical education do we find reform in both curriculum and methodology.<sup>163</sup> Most instruction is still carried on through the case-Socratic method.<sup>164</sup> This method consists of the analysis of appellate decisions in a classroom setting where the teacher engages a student or several students in a Socratic dialogue.<sup>165</sup>

The case-Socratic method has been the subject of an increasing number of complaints and criticisms.<sup>166</sup> Minority students are only

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163. "Clinical education refers to learning by doing: teaching a student by having him actually perform the tasks of a lawyer." H. Packer & T. Erlich, *New Directions in Legal Education* 38 (1972).

164. *Id.* at 29.

165. *Id.*

166. See generally Note, *supra* note 111; Watson, *supra* note 118, at 711-12; Stone, *supra* note 115, at 407-26; Watson, *supra* note 113, at 110-23; Savoy, *supra* note 112, at 457.

one of the many voices of dissatisfaction with this method of teaching law. These complaints have been summarized by Packer and Erlich as follows:

The class atmosphere is said to be a hostile one, with the hostility directed from the icily distant teacher toward the student on the spot. Law professors as a group tend to be extremely intellectual and extremely verbal, very often to the point of ignoring the emotional and connotative level of communication. In any case, the student may suffer a severe loss in self-respect and possibly even an identity crisis.

In addition to criticisms of the emotional result of the Socratic method, we now hear claims that the process does damage to the student's intellectual initiative and imagination. The limits of the discussion are totally controlled by the teacher; his assumptions form the discussion; his questions are considered. The student, it is claimed, is conditioned to work in a "given" framework, not to construct his own.<sup>167</sup>

The complaints described above are of special concern to some Chicano law students. Because of their cultural values and educational background they find it difficult to become active participants in the give-and-take of a Socratic classroom. Finding themselves passive spectators in the daily dramas they may begin to question whether they are destined to be lawyers at all. Morale may drop, and the student may be assailed with self-doubts. Studies indicate that one of the main determinants of a law student's performance is his self-regard.<sup>168</sup> Hence, to the extent that the Socratic method tends to weaken the self-esteem of a law student—minority or non-minority—it may increase his chances of failure.

The case-Socratic method has withstood these complaints and criticisms, however, and remains the primary teaching method in law schools. Other methods, such as lecturing, are viewed as heresy among law school professors.<sup>169</sup> Professors who continue to use some variant of the Socratic method should, at the outset, explain its rationale and purpose.<sup>170</sup> Later, when a natural opportunity presents itself, they should discuss with the class the stresses involved in reciting in a formal, adversarial setting, and point out that some anxiety is only natural.<sup>171</sup> Students should be rewarded for good

167. H. Packer & T. Erlich, *supra* note 163, at 30.

168. Patton, *supra* note 120, at 17.

169. H. Packer & T. Erlich, *supra* note 163, at 29. "The instructor does not lecture; among law teachers lecture has been a dirty word." *Id.*

170. See generally Watson, *supra* note 113, at 160-63.

171. *Id.*

performances,<sup>172</sup> and the varieties of analytical traps or fallacies students fall prone to should periodically be acknowledged, labeled, and discussed.

Consideration might be given to postponing introduction of Socratic techniques until the second or third semester. Apart from helping to ease the adjustment problems of already overburdened students,<sup>173</sup> such an approach would be in accord with sound learning theory.<sup>174</sup> According to most learning theorists, the preferred sequence is from inductive to deductive thinking processes. Yet, the Socratic approach, which stresses application of legal rules to fact situations, is an essentially deductive technique. Reverting to a more natural sequence would involve not only less anxiety for the student but would place legal education in conformity with recent insights in discovery learning and result in a deeper understanding on the part of students.

Classes should be smaller to permit giving greater attention to each student.<sup>175</sup> A small student-faculty ratio makes for better teaching, and Chicano students, especially, can benefit from better teaching. The more attention each student receives, the more reinforcement and feedback he gets. Additional means of providing systematic feedback should be instituted.<sup>176</sup> Instituting midterm examinations that would be returned to the students with comments would be a big step in that direction. Other measures could be the provision of

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172. See note 121 *supra*.

173. Very few Chicanos have had experience, prior to law school, in dealing with the performance exacted of them in a Socratic classroom. See notes 110-120 *supra*, and accompanying text. Indeed, one author has suggested that the purpose of the process of dialectic and recitation is to instill self-doubt, an item most first year minority students have in abundance. Woodey, *Why Law Professors Bark*, Student Lawyer, Mar. 1973, at 40.

174. See Diggs, *supra* note 123, at 768; Kelso, *Science and Our Teaching Methods: Harmony or Discord?*, 13 J. Legal Ed. 183 (1961).

175. The average size of a first year class exceeds 100 in most law schools. See American Bar Association, *A Review of Legal Education in the United States—Fall 1973*, Law Schools and Bar Admission Requirements, (1974); H. Packer & T. Erlich, *supra* note 113, at 29. The sheer numbers of law students and the high student-faculty ratio do not permit the law teacher to engage each student in a Socratic dialogue to a substantial degree. For the same reasons, little personal contact is possible between the faculty and students outside of class. See Stone, *supra* note 115, at 404.

176. The lack of feedback is one of the major criticisms leveled against law school education. Examinations are administered only at the end of courses, and examination results are usually not available until a substantial time following the administration of the examination. Moreover, examination papers are rarely returned to the student. Thus, the only institutional feedback that a student receives is a grade that is far removed from his performance and that merely informs the student how he did compared with other students. Qualitative feedback is rare. For complaints about the lack of feedback see Note, *supra* note 111; Bell, *supra* note 4, at 551; Folup, *The 1969 CLEO Summer Institute Reports: A Summary*, 1970 U. Tol. L.Rev. 633, 658; Gozansky & DeVito, *supra* note 131, at 730; Diggs, *supra* note 123, at 764; Watson, *supra* note 113, at 123, 129.

model answers for each final examination, the return of examination bluebooks with comments shortly after the examination, a class meeting shortly after the examination devoted to the examination issues, and the willingness of professors to go over each student's examination. Even compliments for a good recitation in class would be valued by the students.

In addition, the grading system could be modified to reduce the competitive atmosphere. General categories of achievement could be utilized rather than differences based on a scale of 55 to 100 where the difference between an 82 and 83 is so slight as to be insignificant. The maintenance of class ranking is unnecessary for most purposes. Even a pass-fail system may be adequate in many cases to serve the law school's interest in measuring competence.<sup>177</sup>

If competitive grading must be retained, consideration should be given to eliminating some of its more anxiety-producing features. Although they may pretend indifference,<sup>178</sup> minority students tend to be extremely anxious about their grades and what they mean. This is so not only because they worry, as all law students do, about their competitive position in the job market, but also because grades are essential to their forming a realistic self-assessment.<sup>179</sup> As behavioral scientists have observed, a combination of circumstances conspires to make it difficult for many minority students to learn the nature of their abilities.<sup>180</sup> Grades can help them in this search, however, only if the grading scale is uniform and represents clearly defined and understood standards. If a law school finds that the minority students are at the bottom of the class, or failing, the solution is not to

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177. Insistence upon distinguishing levels of excellence beyond a basic level can have serious detrimental effects on many students. Failure to excel in the first year of law school affects students' motivation and performance in the remaining two years. Patton, *supra* note 120, at 50. Unless a student excels, he does not receive the recognition or prizes that the law school bestows, such as law review. Simply passing is usually not rewarded or appreciated. Yet such achievements should be reinforced in order to motivate these students to involve themselves in their classes and in law school activities. For minority students, reinforcement of success in the sense of passing is essential. See Hamblin, Buckholdt & Doss, *Compensatory Education: A New Perspective*, 1970 U. Tol. L. Rev. 459.

178. See notes 117-30 *supra*, and accompanying text.

179. See, e.g., Bok, *supra* note 62, at 30. Conflicting messages from educational authorities produce some of this uncertainty; the student is uncertain over the extent to which he has been aided in his educational career by the beneficent, invisible hand of "special" programming and grading. See Panella & McPherson, *supra* note 133, at 579-89; Bell, *supra* note 4, at 552.

180. Any suggestion that law school is not an "equal race" can be a devastating experience for the minority student; his progress, his performance in courses, all become suspect in his eyes. See O'Neil, *supra* note 69, at 763-64; Graglia, *supra* note 62, at 360-61. See Bell, *supra* note 4, at 551-52.

lower standards or adopt a dual grading policy,<sup>181</sup> but to put into effect compensatory programs, such as those discussed in the next section,<sup>182</sup> in order that those students in need of help can progress to the point where they can meet regular academic standards. Differential grading inevitably becomes known and, when it does, it results in a loss of self-esteem on the part of the minority student and degrades him in the eyes of his fellow classmates.<sup>183</sup> It also cheats the more able, hard-working Chicano whose legitimate "B" or "C" grade becomes indistinguishable from the easy grade given those who did not meet the regular standard.<sup>184</sup> When a given Chicano student, despite special assistance, cannot come up to the required standard, probation or expulsion may be the only solution. "Carrying" students through three years of law school only to have them discover that they cannot pass the bar examination serves neither their interest nor that of the minority community.<sup>185</sup>

### 1. Normative vs. Deductive Analysis.

In its purest form, the Socratic method is highly non-normative. The emphasis is on analysis of cases, distinguishing holdings from one another, and applying legal rules to borderline situations—on technique for its own sake.<sup>186</sup> While the acquisition of analytic skills is a legitimate, indeed, essential, goal, it is often sought to the exclusion of equally important matters. Typically, Socratic teachers devote little or no time to the analysis of the social and economic class interests involved in various rules of law or to the manner in which the law can serve to promote, or deter, race or class oppression.<sup>187</sup>

181. A number of law schools concede that they do employ such a practice, and it appears likely that it is more widespread than is admitted. Graglia, *supra* note 62, at 359-60; Hughes, McKay & Winograd, *supra* note 2, at 710; Ijalaye, *Concessional Admission of Underprivileged Students*, 20 Buff. L. Rev. 435, 440 (1971); Bell, *supra* note 4, at 552.

182. See text accompanying notes 199-254 *infra*.

183. See notes 179-81 *supra*, and accompanying text. Many Anglo students feel slightly jealous of minority students, whom they see as receiving privileges, such as financial aid, they do not "deserve." Cochran, *supra* note 162, at 655; Pinderhughes, *supra* note 69, at 456-57. See generally Summers, *supra* note 119.

184. O'Neil, *supra* note 69, at 763; see Leonard, *supra* note 62, at 26.

185. Cabranes, *Careers in Law for Minorities: A Puerto Rican's Perspective on Recent Developments in Legal Education*, 25 J. Legal Ed. 447, 455 (1973); see Carl & Callahan, *supra* note 75, at 259. 1973 AALS Proceedings, Part I, at 144, cites a newspaper story critical of the University of Michigan's affirmative admissions policy on the grounds that such a policy inevitably means a dual graduation, as well. But see Hughes, McKay & Winograd, *supra* note 2, at 710, arguing that many minority students who are in serious academic difficulty would make fine attorneys if only they were able to pass their school and bar examinations. Leonard, *supra* note 62, at 26, believes that Blacks who have been only marginal students in law school often do well after graduation, freed from the constraints and pressures of law school.

186. See Katz, *supra* note 124, at 603-04; see also Watson, *supra* note 113, at 110.

187. Diggs, *supra* note 123, at 768.

Many instructors pride themselves on their treatment of "policy" factors, but in too many cases policy analysis is conducted in factual contexts or settings that do not readily lend themselves to exploration of the social issues of greatest concern to the minority communities. Yet such social issues are intellectually valid areas of inquiry,<sup>188</sup> and they are, of course, areas of intense interest to the minority student. Indeed, Anglo students have been pressing for their inclusion for some time, not so much because they concern them personally, but because the absence of any socio-ethical dimension to law study leaves them feeling like "hired guns."<sup>189</sup>

The addition of a valuative dimension would do much to ease the minority student's feeling that law is irrelevant to his aspirations and reduce his fear that he is being co-opted into an alien, hostile world.<sup>190</sup> It would also give him an area in which he could excel. As a result of his background and life experiences, the minority student is often capable of very sophisticated analyses of the racial or class dynamics of a legal prescription. Naturally, incorporation of such questions into classroom methodology would require that they be made a part of examinations as well.

## 2. Attitudes

Perhaps the most critical need for change is in the attitudes of law schools and law teachers toward teaching. Law schools should restore an emphasis on teaching as its central mission. Scholarship and writing, while important, should be viewed in the context of this principal mission.<sup>191</sup> Law faculties should familiarize themselves with the principles of learning and with the literature relating to methods of imparting information and skills.<sup>192</sup> They should experi-

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188. See Bell, *Black Faith in a Racist Land*, 17 How. L.J. 300, 317 (1972); cf. Pinderhughes, *supra* note 69, at 447-48.

189. Savoy, *supra* note 112, at 462, 472; see also Katz, *supra* note 124, at 694.

190. See notes 68-81, 105-07, 113-16 *supra*, and accompanying text.

191. The criticism that law teachers are much too busy with building up publication credits to devote the time, energy, and imagination required to teach those students who are not in the top ten percent of their class is widespread. See, e.g., Carl & Callahan, *supra* note 75, at 251; Watson, *supra* note 113, at 111. However, teaching performance has been called the great merit of law teachers. H. Parker & T. Erlich, *supra* note 163, at 32.

192. See, e.g., the principles of learning outlined in Kelso, *supra* note 174, at 184. These principles are (1) need for the student to see the relevance of his study to his goals, (2) feedback, and (3) satisfactory personality adjustment to the educational system. See also the suggestion that the psychology of education and the findings of behavioral science be emphasized in law teaching. Diggs, *supra* note 123, at 768. The concepts of teaching and learning are generally not known by law teachers. They come into law teaching by reason of outstanding academic credentials. Law schools assume that new professors will be able to teach, but they are rarely given training in teaching. They have had no courses in educational theory, educational psychology, or even practice teaching. They are generally not observed or critiqued by their colleagues. Although law professors apply themselves vigor-

ment with different methods of teaching such as clinical education, audio-visual aids, the use of problems, and lectures. Professors should strive to make their classes interesting and enjoyable. They should give thought to the question of how to motivate the students to become involved in the subject matter they are teaching by means other than the fear or the reward of grades.<sup>193</sup> Examples and questions can be drawn from areas of interest to all students, including minority students.

A change in attitude should reflect a greater concern for the students as individuals. Who are they? What are their backgrounds,<sup>194</sup> their aspirations, their educational needs? The teacher should cultivate a sensitivity to the students' feelings, their anxieties, their frustrations, and their fears.<sup>195</sup> He should be willing to meet with the students outside of class both formally and informally. He should be accessible to the students to discuss either class material or non-academic subjects. In short, the law teacher needs to change his image from one of detachment to one of understanding and concern.

It should be observed that a recent attempt to teach law teachers how to teach has been made. The Association of American Law Schools has sponsored three Law Teaching Clinics, the first in 1969, the second in 1971, and the third in 1973. These clinics were conducted during the summer for law teachers with no more than four years of law teaching experience. The faculty consisted of experienced law professors. The focus and commitment of the clinics was described as follows by the Director, Frank R. Strong, Professor of Law at the University of North Carolina:

The program focus was . . . on the teaching learning process—learning theories; educative elements in the cognitive learning of law; awareness of emotive factors in the student-teacher relationship and development of coping capacity; appreciation of the presence of similar emotive factors in attorney-client relationships and of the importance of effective as well as cognitive learning; the place of conative learning in law study. Such focus emphasizes attention to attitudinal considerations and classroom methods and skills. Development of substantive *legal* knowledge is involved only as a means to these ends, but there is definite intent to acquaint the law teacher

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ously in preparing for class, and pride themselves on this, they devote little effort to the art of teaching. Stone, *supra* note 115, at 403.

193. For example, law schools have been criticized for devoting too little attention to motivating students. Diggs, *supra* note 123, at 764.

194. See Bell, *supra* note 4, at 553-54.

195. *Id.*; see also Watson, *supra* note 113, at 113, 160-63.

with elementary psychological and psychiatric knowledge pertinent to the learning process.<sup>196</sup>

One hundred and seventy-five law teachers have participated in the three Law Teaching Clinics. Fifty participated in the 1969 Clinic held at the University of North Carolina, fifty-eight in the 1971 Clinic at the University of Wisconsin, and sixty-seven in the 1973 Clinic at the University of Colorado.<sup>197</sup>

Despite the success of the Law Teaching Clinics, their future is in doubt due to funding problems. The Law Teaching Clinic was fully funded by the Office of Education in 1969 and 1971, and about two-thirds funded in 1973. Although the Law Teaching Advisory Committee has recommended the continuation of the Clinic and the search for further funding of the Clinic,<sup>198</sup> no decision regarding a 1975 Clinic has yet been made.

The Law Teaching Clinics have indeed made an important start in legal education—training law teachers in teaching. If the clinics cannot be continued due to funding problems, the work of the clinics should be carried on by the individual law schools. The faculty of the University of New Mexico School of Law, for example, has experimented with the use of video-taped classes by some of its faculty as a means of ascertaining what are the common elements of a “good” class. Other techniques can readily be devised.

### C. Special Programs

The most significant responses of law schools to the challenge of educating Chicano and other minority students are in the nature of special programs for these students. To a certain extent, these programs may involve a change in curriculum or in teaching methods,<sup>199</sup> but they are separately categorized because they are not generally available to the entire student body. For the most part, these programs are designed for and limited to the minority students admitted under different admissions standards. To be sure, special programs in some schools are not limited to minority students,<sup>200</sup>

196. *Report of the Law Teaching Clinic Advisory Committee in 1971 Proceedings of the AALS* 132, 133.

197. *See Report of Law Teaching Clinic in 1969 Proceedings of AALS* 118; *1971 Proceedings*, at 132; *1973 Proceedings*, at 95.

198. *See Report of the Law Teaching Clinic Advisory Committee in 1973 Proceedings of the AALS* 95, 98.

199. *See notes 142-98 supra*, and accompanying text for a discussion of the changes in curriculum and teaching methods apart from special programs.

200. For example, the Programmed Studies course at the University of New Mexico is designed for students with low admissions credentials. *See the description of this program infra*, at notes 248-54.



but since most programs are aimed at the student with low admissions credentials and since most minority students are admitted on a special basis, practically all special programs are associated with "minority programs."

Special programs for minority students have been developed for a number of reasons,<sup>201</sup> and they may serve a number of different but related purposes. For example, some programs are specifically designed to perform an evaluation function, such as summer pre-law programs, but they may also serve other functions such as public relations, orientation, preparation, and supplemental education. The evaluation and public relation functions are directed to the admissions process, and will not be emphasized here; only those special programs that are directed to meeting the challenge of educating minority law students who are admitted will be examined in detail.

### 1. Pre-Law Programs

Pre-law programs have generally emphasized the evaluation function,<sup>202</sup> that is, they have been used to assess probable performance in law school. As such, they have served as an alternative to the traditional predictors—the Law School Admission Test (LSAT) and undergraduate grade point average (UGPA).<sup>203</sup> Those students who successfully complete the pre-law program are generally admitted to a law school.

The best-known examples of such programs are the summer regional institutes sponsored by the Council on Legal Education Opportunity (CLEO),<sup>204</sup> the University of New Mexico program for American Indians,<sup>205</sup> and the University of Denver programs, open primarily to Chicanos.<sup>206</sup> These programs serve more than an evaluation function. They serve an educational function. One function or

201. The reasons that have been advanced for special programs are (1) evaluation for purposes of admission, (2) public relations in order to project a better image with regard to equal opportunity, (3) orientation for the purpose of acclimating minority students to the rigors of law school, and (4) education, either supplementary or compensatory. *See, e.g., Rosen, Equalizing Access To Legal Education: Special Programs For Law Students Who Are Not Admissible By Traditional Criteria*, 1970 U. Tol. L. Rev. 321, 336-40.

202. *Cf. Rosen, supra* note 201, at 344-48.

203. Fulop, *supra* note 176, at 638.

204. For descriptions and evaluations of the CLEO program *see generally* Rosen, *supra* note 201, at 341-48; Fulop, *supra* note 176; Panella & McPherson, *supra* note 133; Gozansky & DeVito, *supra* note 131; Reiss, *supra* note 13.

205. The University of New Mexico program is described in detail in Christopher & Hart, *Indian Law Scholarship Program at the University of New Mexico*, 1970 U. Tol. L. Rev. 691.

206. The Denver program for Chicanos is described in Huff, *supra* note 38.

the other may be emphasized in the particular CLEO regional institute or other program, but they all serve an educational purpose.<sup>207</sup>

What are the educational purposes served by the pre-law programs? First, they have been used to acclimatize the students to the law schools.<sup>208</sup> The programs are designed to closely resemble a typical law school experience. Several courses, usually from the first-year curriculum, are offered. Students are exposed for the first time to case analysis and the Socratic method. Law school-type examinations are administered and graded. Thus, the shock experienced by all new students in the first semester of law school may be substantially reduced.<sup>209</sup>

In addition to acclimatizing the students to law school study, classes, and examinations, many programs have been used to provide the students with the basic skills essential to success in law school. For example, study techniques such as briefing, outlining, and reviewing have been emphasized. Research techniques, library use, and examination-writing techniques have also been emphasized by some programs.<sup>210</sup>

A third purpose served by some pre-law programs is compensatory or remedial education. This purpose assumes that the minority students admitted to law school with lower credentials as measured by the traditional admissions criteria are likely to be deficient in some of the skills tested by the traditional criteria. This purpose further assumes that the verbal and analytical skills tested by the traditional admissions criteria are important to success in law school.<sup>211</sup> Accepting these assumptions, some programs offer remedial courses in English grammar, composition, etc.<sup>212</sup>

In view of the qualifications of the minority students presently being admitted to law school, a compensatory or remedial aspect is generally unnecessary in pre-law programs today. For example, all but one of the Chicano students admitted to the University of New Mexico School of Law in the fall of 1974 who participated in the CLEO institute were predicted to succeed in law school using the

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207. Cf. Rosen, *supra* note 201, at 344.

208. A description of this particular function of pre-law programs is found in Rosen, *supra* note 201, at 338-39.

209. For an account of the difficulties encountered in adjusting to law school, see generally, Patton, *supra* note 120; Note, *supra* note 111.

210. A variety of skills emphasized in CLEO institutes and other pre-law programs are summarized in Rosen, *supra* note 201, at 340, 346.

211. These assumptions are summarized in Rosen, *supra* note 201, at 339-40.

212. See notes 222-34 *infra*; Rosen, *supra* note 201, at 346, for examples of CLEO institutes that offered remedial or compensatory programs. See also Panella & McPherson, *supra* note 133, at 562, 568.

traditional admissions criteria.<sup>213</sup> Very few students attending the 1974 Southwest Regional Institute at the University of New Mexico scored below 400 on the LSAT, and a substantial number scored above 500.<sup>214</sup> Thus, the need for a remedial component is not present for the overwhelming majority of minority students admitted to a pre-law program.<sup>215</sup> For those students who do need remedial instruction in a basic skill, a remedial program should be designed to meet the particular needs of those students without subjecting all of the students to an unnecessary and demeaning exercise.<sup>216</sup>

Several CLEO institutes have generally rejected the notion of compensatory education. The 1973 and 1974 Southwest Regional CLEO Institutes, largely filled by Chicano students, emphasized the skills essential to success in law school. The Director of the 1973 Southwest Institute described the educational purpose as follows:

The skills that we attempted to teach were not remedial. We did not pay very much attention to students' grammar, sentence structure, or even diction unless such deficiencies inhibited understanding. Instead, we attempted to teach methods of legal analysis and organization that would be helpful in taking law school examinations.<sup>217</sup>

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213. See L. Romero, *Final Report of the Director: Southwest Legal Education Opportunity Institute*, 1974 (on file at the national headquarters of the Council on Legal Educational Opportunity, Washington, D.C.).

214. *Id.*

215. The students attending CLEO institutes today are much better qualified than the students attending CLEO programs five years ago. This conclusion is supported by the statistical studies in Council on Legal Education Opportunity, *Characteristics and Performance of Minority Group Students Who Entered Law School in 1968, 1969, and 1970: Comparison of CLEO Participants with Other Minority Group Students* (Unpublished Study on file at the CLEO headquarters in Washington, D.C.). One study revealed that the percentage of CLEO participants with LSAT scores below 450 decreased from 82.7 in 1968 to 73.1 in 1970. For Mexican-American CLEO students the decrease in the percentage of low LSAT scores is even more dramatic. Table 3 indicates that the percentage of Chicanos in CLEO with LSAT scores below 450 dropped from 66.66 in 1968 to 57.9 in 1970. The latest statistics supplied by CLEO for the CLEO class of 1973 show that 52.2 percent of the participants scored below 450.

It can be inferred, quite legitimately, that the number of students in pre-law programs such as CLEO who need remedial programs has likewise decreased. For example, in the 1969 CLEO institute at the University of Iowa, approximately 27% (13 out of 48) of the participants were found to be in need of a remedial writing program. See Panella & McPherson, *supra* note 133, at 562. It may be assumed that the percentage is substantially smaller today.

216. The 1969 University of Iowa CLEO institute is one example of a remedial program designed especially for those students with serious writing difficulties. See Panella & McPherson, *supra* note 133, at 562, 568. The 1973 and 1974 Southwest CLEO institutes dealt with students in need of special help on an individual basis. See Lee, *Final Report of the Director: Southwest Legal Education Opportunity Program*, Summer 1973, at 16 (on file with the national CLEO office headquarters, Washington, D.C.).

217. Lee, *supra* note 216, at 16.

The distinction between the teaching of certain skills for remedial purposes and the teaching of other skills for purposes of succeeding in law school may seem insignificant, but it is an important one.<sup>218</sup> The latter skills are ones that all students must acquire if they are to succeed in law school. Most students, nonminority as well as minority, will not have these skills—for example, case analysis and organization of answers to a law school examination—when they enter law school. Some students may be more adept at mastering these skills, but, essentially, they are skills that all students must acquire.<sup>219</sup> To the extent that a pre-law program focuses on the teaching of such skills, it is not remedial. Rather, it is supplementary or enriching. And it is supplementary education, not remedial education, that can best benefit most Chicano students.<sup>220</sup> Indeed, supplementary education would benefit most nonminority students as well.

The controversy over remedial and supplementary education in pre-law programs arises primarily in the design of the writing programs. CLEO requires a writing program in each of its regional institutes.<sup>221</sup> Some institutes design the writing program as a compensatory program<sup>222</sup> while a few institutes have structured the writing program to provide supplementary education.<sup>223</sup> Those that offer remedial writing instruction normally employ English teachers<sup>224</sup> and emphasize basic writing skills such as grammar, diction, and organization.<sup>225</sup> Although legal materials may be used for the writing assignments, the focus is on communication skills, not examination-writing skills.

The writing programs that are supplementary rather than remedial

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218. The distinction is also recognized in Rosen, *supra* note 201, at 343.

219. For an excellent description of the special tasks students must master in order to do well at law school exams, see Bell, *Law School Exams and Minority Students*, 3 BALS Reports 39 (Spring 1974).

220. Moreover, supplementary education minimizes the risk that minority students will view the special program as implicitly treating them as inferior. See Rosen, *supra* note 201, at 343.

221. Memorandum from Michael J. Moorhead, Executive Director of CLEO to Law School Deans, September 25, 1973, regarding sponsorship of regional summer institutes, at 5 (unpublished memorandum on file with the Nat'l CLEO Office, Washington, D.C.).

222. See Rosen, *supra* note 201, at 346 n. 59; Panella & McPherson, *supra* note 133, at 562, 568.

223. In particular, the 1973 Southwest CLEO Institute at Arizona State University and the 1974 Southwest CLEO Institute at the University of New Mexico designed their writing programs to focus on examination-writing skills. See Lee, *supra* note 216, at 28.

224. For example, one of the writing instructors at the 1969 University of Iowa CLEO program was an assistant professor of literature. The other writing instructor was not a lawyer. Panella & McPherson, *supra* note 133, at 559. In addition, one writing instructor at three CLEO institutes is a lecturer in English. Brand, *supra* note 129.

225. *Id.* at 332.

in nature proceed from the assumption that most minority students have the requisite language skills to succeed in law school.<sup>226</sup> Therefore, the focus is on the examination-writing skill that is critical to success in law school. Unlike the remedial writing programs, law professors, usually teachers of first-year courses, are used.<sup>227</sup> The written assignments are law school-type questions that call for legal analysis of a fact situation. Analysis of the problem and recognition of the legal issues are emphasized as the first and most important skills in the process of writing an answer.<sup>228</sup> The second related skill is organization. The students are taught how to outline and organize an answer in a way that will apply legal concepts to the facts of the problem and demonstrate the validity of the writer's analysis.<sup>229</sup>

There are several important considerations when comparing the relative values of the remedial writing programs and the supplementary legal writing programs. First, do Chicano law students have a basic deficiency in communication skills? Advocates of the remedial programs maintain that CLEO and minority students do suffer from communication skills difficulties, but they are careful to point out that these problems are not unique to minority students.<sup>230</sup> It must be recognized that Chicano law students, like other students, are not a homogeneous group. As a whole they have the same range of language abilities and difficulties as other students.<sup>231</sup> Some Chicano law students, like some regular students, may need remedial help. And, of course, it might benefit most students, Chicanos and others as well, to participate in a remedial writing course. The reason students have trouble on law school examinations, however, is usually not an inability to communicate in proper English; rather, it is the lack of preparation for the type of exacting writing that will be required of them in law school examina-

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226. See note 215 *supra*. Writing problems are not unique to minority students, and they have the "same range of abilities and difficulties as other students." Brand, *supra* note 129, at 331. *Contra*, Cabranes, *supra* note 185, at 458.

227. For example, the 1973 Southwest Cleo Institute at Arizona State University and the 1974 Southwest CLEO Institute at the University of New Mexico chose to employ law professors to teach in the writing programs. Since the writing program focused on the skills involved in writing law school examinations, law professors with experience in drafting, reading, and grading law school examinations were best suited for the program. See Lee, *supra* note 216, at 20.

228. See the description of the writing courses offered in the 1973 Southwest CLEO Institute at Arizona State University by Professor Rose and Mr. Farr in Lee, *supra* note 216, at 42-45, 46-56.

229. *Id.* See also the suggestions for writing law school examinations in Bell, *supra* note 219, at 39, 41-42.

230. Brand, *supra* note 129, at 331.

231. *Id.*

tions.<sup>232</sup> To devote the focus of a writing program to the mastery of the examination writing skill is a far better allocation of resources. It has the further advantage that the students can see the relevance between their writing exercises and survival in law school. Finally, a supplementary writing program avoids the minority students' reaction to a "remedial" program as evidence of their inferiority.<sup>233</sup> To the extent that some minority students, or some nonminority students, need remedial writing programs, they should be provided on an individual and specially designed basis.<sup>234</sup>

## 2. Pre-Start Program

The distinguishing characteristics of pre-start programs are: (1) The students take prescribed regular law school courses during the summer; (2) Academic credit is received for such courses; and (3) The students who move from such a program into law school are usually light-loaded during the first year.<sup>235</sup> Pre-start programs, like pre-law programs, may serve a number of functions. For most such programs, however, the predominant purpose is evaluation.<sup>236</sup> If the student receives satisfactory grades in the prescribed summer courses, he is then admitted into law school for the fall semester.

Although such programs are successful as an admissions device,<sup>237</sup> the educational value of such programs for minority students is questionable. In some pre-start programs, there is no supplemental or enrichment component.<sup>238</sup> Nor do pre-start programs serve to acclimatize and prepare the students for the first year of law school, since the program in essence is the commencement of their first year in law school. For students who do not do well, failure in the summer courses spells the end of their legal career. Thus, the effect of pre-start programs which lack supplemental or remedial features is to establish another obstacle for minority students to admission to law school. And this obstacle must be overcome without the benefit of

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232. *Id.* at 332. The ways in which law school examinations are unique are described in Bell, *supra* note 219, at 39-40.

233. When special programs are viewed as compensatory or remedial, minority students tend to infer that the predominantly white law school is treating them as inferior. Rosen, *supra* note 201, at 343.

234. See note 215 *supra*.

235. See generally Rosen, *supra* note 201, at 352-56.

236. The major exception is the University of Michigan pre-start program described in Rosen, *supra* note 201, at 353.

237. See Murray, *The Tryout System*, 21 J. Legal Ed. 317 (1969); Murray, *The Tryout Program in Retrospect*, 26 J. Legal Ed. 363 (1974) for a description of the University of Georgia School of Law's summer tryout program.

238. For example, neither the Emory Law School nor the University of Michigan pre-start programs incorporate remedial or supplemental education features. Rosen, *supra* note 201, at 352-53.

any educational assistance. In essence, such programs have adopted the "sink or swim" attitude.

Some schools have attempted to include an educational aspect in addition to the evaluation component in their pre-start programs, by incorporating remedial courses.<sup>239</sup> Others have added supplemental education features.<sup>240</sup> One program has even rejected the evaluation functions; the students cannot fail the pre-start program.<sup>241</sup> Thus, those students who do not receive academic credit may still enroll in law school. For them, the pre-start program is essentially a trial run at law school. Its educational value lies in its capacity to acclimatize and prepare these students for "the real thing."

Since most pre-start programs emphasize the evaluation function for admissions purposes, special educational programs should be specifically designed to aid the students who graduate from these programs and enter law school. Law schools cannot consider most pre-start programs as having provided any kind of supplemental or remedial educational assistance. Therefore, once the successful students of these programs enter law school, the challenge of educating them still remains.

### 3. *In-School Programs*

Perhaps the best measure of a law school's commitment to meet the challenge of educating Chicano and other minority students is their provision of special programs for minority students who gain admittance to law school. Failure to provide such special programs is an indication of a school's retention of the "sink or swim" attitude and its unwillingness to accept the challenge of educating all its students.

The types of in-school programs are extremely varied. Moreover, they differ in the degree of responsiveness to the needs of students who lack traditional admissions credentials. It is impossible to survey all of the in-school programs designed by the different law schools, but a summary of the kinds of such programs will be attempted. In addition, those programs that are especially innovative or that serve a substantial number of Chicano law students will be described in more detail.

Many law schools with a minority student program offer some

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239. Both the University of Missouri at Kansas City and the University of Colorado pre-start programs include a remedial education component. Rosen, *supra* note 201, at 354.

240. The Drake Law School's program has a supplemental education feature. Rosen, *supra* note 201, at 355.

241. See the description of the University of Michigan pre-start program in Rosen, *supra* note 201, at 353.

kind of tutorial program.<sup>242</sup> The tutorial programs are sometimes highly structured, but many are informal. Structured tutorial programs are of indisputable benefit to specially admitted law students. They usually involve faculty members or paid student assistants, and the tutorial sessions are regularly scheduled. Good tutorial programs can ensure that the students understand, review, and organize the material in preparation for final examinations. Furthermore, tutorials can reinforce the Chicano law student's confidence in himself by providing feedback on his understanding of the substantive course materials.

Some in-school programs are essentially curricular modifications. For example, one school permits specially admitted minority students to elect a seminar on a "relevant" subject in lieu of a regular first-year course.<sup>243</sup> Other schools have designed a four-year law school program for those students with low admissions credentials.<sup>244</sup> The students in such "stretch-out" programs normally take the first-year curriculum in two years. Some schools with four-year programs supplement the first year courses with courses offered in other departments that may help to overcome certain educational deficiencies or to enrich law school education generally.<sup>245</sup> Such stretch-out programs can do much to help alleviate the pressures certain minority students experience, particularly in the first year.

Writing programs are offered by some schools, but they appear to be mostly remedial; that is, they tend to focus on language skills such as reading, grammar, structure, and diction.<sup>246</sup> For the most part, in-school writing programs, like pre-law writing programs, fail to emphasize the skills involved in writing law school examinations.<sup>247</sup>

A particularly innovative, and successful, in-school educational program has been developed by the University of New Mexico. Since most of the students who participate in this program are Mexican-American students, it will be described in some detail.<sup>248</sup> The pro-

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242. The most common type of special program operated by law schools for disadvantaged students during 1971-72 was a tutorial program. Stevens, Bar Examination Study Project 3-4 (Mem. No. 12, 1974); cf. Rosen, *supra* note 201, at 336-63.

243. See the description of the Rutgers (Newark) Law School's program in Rosen, *supra* note 201, at 360-61.

244. See generally Rosen, *supra* note 201, at 357-58.

245. The Stanford Law School stretch-out program is described in Rosen, *supra* note 201, at 357.

246. Of the thirteen types of special programs listed in Stevens, *supra* note 242, at 4, two were remedial writing programs and one focused on examination techniques.

247. See text accompanying notes 221-29, *supra*.

248. The following description is derived primarily from a letter from Professor Ted Parnall, University of New Mexico School of Law, to Professor Rodric Schoen, Texas Tech University School of Law, July 31, 1972, and a letter from Professor Jerrold L. Walden,



gram, called "Programmed Studies," is designed for students with a relatively low predicted first-year average, a group that to a large extent encompasses minority students but includes a substantial percentage of nonminority students as well.

Programmed Studies has several important components. The first is the classroom component. The class meets for one hour each week during the fall semester. The materials utilized for the classroom component are Charles D. Kelso's, "A Programmed Introduction to the Study of Law."<sup>249</sup> These materials contain questions about law, the legal process, application of legal rules, and legal analysis that the student must answer himself. A portion of these materials are assigned for class each week, and the instructor reviews the assigned materials in class to ensure that the material has been understood.

The second component of the program is practice examinations. A short examination is administered to the students each week after the second or third week of the semester. The subjects of the short examinations are taken from the substantive courses that the students are taking. The examinations are graded and critiqued by an instructor with the assistance of tutors or teaching assistants. One additional hour per week of classroom time is devoted to this component.

A third part of the program is the tutorial component. Two student tutors are hired by the law school for each substantive course in which the students are enrolled. There is, in addition, a head tutor who oversees the tutorial program. The tutors attend the classes in the substantive course and meet with the Programmed Studies students on a regular basis throughout the semester. In addition, they assist in the preparation of course outlines.

The final component of the program is the pre-examination review. This part consists of a week-long period of intensive study in the nature of a bar review course for each first-year class in which the students are enrolled.

The results of Programmed Studies are worthy of note. Fifteen persons out of a class of 100 participated in the program in the fall of 1970. Ten of the fifteen had LSAT scores below 500 with no score exceeding 580. Eleven of the fifteen subsequently graduated. One withdrew in good standing, one withdrew while on probation, and two were suspended for academic reasons.<sup>250</sup>

In the fall of 1971, twenty students out of a class of 110 par-

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University of New Mexico School of Law, to Professor Judith B. Ittig, University of Tennessee College of Law, August 12, 1974.

249. C. Kelso, *A Programmed Introduction to the Study of Law* (1965).

250. Letter from Professor Ted Parnall, *supra* note 248.

ticipated in the program. Seven had LSAT scores below 500, and four had scores exceeding 580. Five of the twenty placed in the upper half of the class, and only three received less than a 2.0 (passing) average. Fourteen members of the class who did not participate in Programmed Studies received grade point averages below 2.0.<sup>251</sup>

The results of the Programmed Studies classes of 1972 and 1973 have been equally impressive.<sup>252</sup> On the whole, students enrolled in the program have exceeded their predictions as measured by the traditional admissions criteria.<sup>253</sup> On the other hand, those students admitted on a competitive basis, who did not have the benefit of the program, have either barely met or fallen below their predictions.<sup>254</sup>

The success of Programmed Studies is due to several important factors. Perhaps most important is the commitment of the University of New Mexico to meeting the challenge of educating minority, particularly Chicano, lawyers. This commitment is expressed in the substantial resources that are devoted to the program. Two faculty members are assigned to teach Programmed Studies for which they receive teaching credit. In addition, student tutors are hired for the program. Moreover, Programmed Studies is given the status of a regular course in the fall semester of the first-year curriculum.

The Programmed Studies course carries two hours of academic credit on a pass/fail basis, and it replaces one of the required first-semester courses. The tutorial part of the program, without credit, continues in the second semester of the first year.

An equally important reason for the success of Programmed Studies is its educational design. The program is supplementary in nature, rather than remedial. It focuses on those skills that are most critical to success in law school—good study habits and good examination writing techniques. In sum, Programmed Studies provides Chicano students with the educational assistance and guidance that maximizes the students' opportunities for success in law school.

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251. *Id.*

252. In 1972, 22 persons out of a class of 106 participated in the third year of the program. Twelve had LSAT scores below 500, and two had scores exceeding 580. Twenty-one of the participants achieved passing grades of at least 2.0 in their first year, and four of them achieved averages above 3.0. One student received an average below 2.0.

In 1973, 18 persons out of a class of 106 participated in the program. Fourteen had LSAT scores below 500 and one had a score exceeding 580. Fourteen achieved passing grades of at least 2.0 in their first year, and two achieved averages above 3.0. Two participants withdrew during the first year, and two failed to achieve a passing average. Memorandum by Admissions Committee to Leo M. Romero, University of New Mexico Law School, Sept. 17, 1974.

253. Letter from Professor Jerrold L. Walden, *supra* note 248.

254. *Id.*

#### 4. Evaluation of Special Programs

Any evaluation of special programs for Chicano and other minority law students must consider both the reasons for such programs and the disadvantages encountered in designing and operating them. The reasons for special educational programs are clear and compelling. Many Chicano and other minority students present an educational challenge to law schools, and special educational programs are required to meet this challenge. To the extent that special programs are educational in nature, rather than evaluative, the justification for special programs is strong.

A number of difficulties are involved in the establishment of any special program, however. They involve separation, stigma, paternalism, nonminority backlash, constitutionality,<sup>255</sup> and economics. The most serious difficulty is clearly financial. Special programs must compete with other law school activities for scarce resources. Especially hard for law schools is choosing between allocating funds for minority scholarships and loans, and supporting a special educational program.<sup>256</sup> If law schools are serious about their commitment to educate Chicano and other minority lawyers, however, they should make the effort to find the funds for both financial assistance to the students and special educational programs.<sup>257</sup> The risks involved in a strong minority admissions effort without an accompanying educational program have been dramatically illustrated by the experiences of some law schools, which have suffered wholesale losses among special admission students at the end of the first year.<sup>258</sup>

Providing extra educational resources to the minority students without these being perceived as degrading by the student or as

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255. For a discussion of the constitutional considerations concerning special educational programs see Rosen, *supra* note 201, at 363. Special educational programs may be constitutionally mandated if necessary to provide equal educational opportunity. See *Serna v. Portales Municipal Schools*, 351 F. Supp. 1279 (D.N.M. 1972), *aff'd*, 499 F.2d 1147 (10th Cir. 1974).

256. See generally discussion of the cost in establishing and operating special programs in Rosen, *supra* note 201, at 336.

257. The sources of financial assistance for Chicano law students are severely limited. Outside the law schools, the only sources are the CLEO stipends that presently amount at \$1,000.00 per year and the Mexican-American Legal Defense and Education Fund (MALDEF) grants.

258. See, for example, the experience of the Temple Law School in 1968 when many of their specially admitted minority students did not successfully complete their first year courses. Fortunately, a special program was designed to assist these students rather than flunking them out. Rosen, *supra* note 201, at 361. Another recent example occurred in 1972 at a large state university where all of the black students in the first year class were placed on academic probation. 1973 Proceedings of AALS, Part I, at 145-46 [hereinafter referred to as 1973 AALS Proceedings].

tending to isolate him from the rest of the student body is a delicate problem. To a large extent, the way the minority student views the school's efforts to provide for his benefit special review sessions, tutorials, classes in remedial writing, and the like, will be a function of the overall atmosphere.<sup>259</sup> Where attitudes are essentially positive, these programs are apt to be received, and used, by minority students with little comment. Where relationships have begun to deteriorate, any measure taken by the school is likely to be seen as further evidence of polarization.

In general, such resources should be made available on a voluntary, rather than a compulsory basis<sup>260</sup> and should be available to all students whose entrance qualifications or first semester grades fall below a certain point—not just minorities.<sup>261</sup> The programs are apt to be better received if the minority student associations have been consulted during their formulation and if minority students have had a voice in determining their final shape and content.<sup>262</sup> Ideally, such programs should be instituted at the initiative of the minority students, but schools may not feel they can wait until a request is received by the minority groups.<sup>263</sup> In this event, the minority associations can at least be brought into the planning and discussion of such programs and can help select the instructors or tutors. One common error seems to be to wait until it is too late. Supplementary programs should be available very early in the student's career, perhaps from the very start, and the cost of such services should be considered an integral part of the operation of any special admissions program.<sup>264</sup>

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259. See note 121 *supra*, and accompanying text.

260. Placing remedial programs on a compulsory basis conveys a message from the law school to minority students that many find doubly offensive: it not only says we have no faith in your ability to succeed without this extra help, it also says we believe you are too foolish, lazy, or proud to do what is in your own best interest without our prodding.

261. Tutorials and other aids that are available (or required) only for minority students are resented as evidence of the school's failure to view them as individuals. See, e.g., Hughes, McKay & Winograd, *supra* note 2, at 712.

262. There has been growing acceptance of student participation in many aspects of law school decisionmaking, including curriculum. See generally Howard, *Goodbye Mr. Chips: Student Participation in Law School Decision-Making*, 56 Va. L. Rev. 895 (1970). If student input into the curriculum-setting process is advantageous, it would appear to be especially so where the school is concerned with establishing special courses that will affect only a small segment of the student population.

263. The University of New Mexico Law School, for example, requires that all students who have been admitted with credentials falling below a certain cut-off enroll in a special course of programmed studies. This is a "given;" the student has no choice about it, and the decision whether to operate the program is not reopened every year.

264. See, e.g., Reiss, *supra* note 13, at 719 for a description of the disadvantages that arise from maintaining the minority program on an ad hoc, year-to-year basis.

#### D. Counseling

Counseling services should be made available to the minority student, perhaps even before he gains admission, in order to help him arrive at a realistic assessment of his own capacities as well as the inherent limitations of what the law can do.<sup>265</sup> Chicano lawyers have very few role models.<sup>266</sup> Provision of counseling services can help avoid needless detours and discouragement and help students understand where the various roads lead.<sup>267</sup> It is not enough that a placement office exist and that notices appear periodically on the bulletin board.<sup>268</sup> Many minority students, especially at first, feel overwhelmed and are unlikely to take the initiative in investigating various lines of professional development. At little cost, placement and counseling services can arrange for visiting lecturers of minority background who speak on various kinds of legal work. Faculty panel discussions can help clarify the advantages and disadvantages of different types of careers, and a faculty member or dean should be informally designated to seek out minority students to see how they are progressing in their career planning and adjustment to law school. Where summer jobs are scarce or highly competitive, or where minority students have been unsuccessful at finding summer work of a legal nature, the placement director should canvass local law firms and government agencies in search of jobs for minorities.<sup>269</sup> This effort should occur early in the year so that students and employers can be paired ahead of time and so that the students can begin to acquire the mental set of a person who is going to do genuine legal work during the summer.

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265. See Stone, *supra* note 115, at 426-27; Watson, *supra* note 113, at 160; see also Kelso, *supra* note 174, at 184.

266. See notes 5-6 *supra*.

267. Chicanos, in common with other minority law students, tend to get less word-of-mouth information from the students of majority race and hence are often in the dark about very elementary facts relating to placement and careers; see Pinderhughes, *supra* note 69, at 456-57.

268. Compare Law School Division of the ABA Equal Rights Project Report, 75 (1972), urging that recruitment of minority students, to be successful, must be aggressive; the recruiting school or agency must take the initiative.

269. Even big-city law firms located in cosmopolitan cities have proven remarkably resistant to efforts to interest them in employing minority persons in summer positions. Cohan, *San Francisco Law Firms Hire the Disadvantaged: Guidelines to a Successful Summer Hiring Program*, 15 Student Lawyer Journal 9 (March 1970) (inquiry sent to major San Francisco law firms resulted in 13% response; of those contacted, fewer than 5% demonstrated interest). There are indications the climate is changing, however, and that firms are now more receptive to hiring minority students. See, e.g., Haley, *The Black Lawyer in Government*, 22 Harv. Law School Bull. 51 (Feb. 1971); Whitehead, *supra* note 133, at 63-65. See Crockett, *Racism in the Courts*, in *The Radical Lawyers* 111, 121-22 (J. Black ed. 1971).

### E. *Non-Anglo Personalities*

Many Asian, Chicano, and native American students find it constitutionally difficult, if not impossible, to affect the aggressive, confident air that permits a student to shine at the Socratic game.<sup>270</sup> It is not so much that they lack intellectual ability or proficiency in the English language, as it is a result of long-term cultural and family conditioning.<sup>271</sup> This is not to say that Chicanos, Asians, and native Americans cannot be good lawyers; not every trial attorney can be a Clarence Darrow or Charles Garry. Some successful trial lawyers are soft-spoken individuals who command respect and attention not for their fiery delivery or dynamic approach but for the obvious sincerity and honesty with which they present their case.<sup>272</sup>

Outside the courtroom, many areas of legal practice require an ability to listen, to form an accurate intuitive understanding of another person's position, and to work effectively in reconciling parties with conflicting interests.<sup>273</sup> These are qualities in which the soft-spoken Chicano may well have an advantage over his more extroverted classmate; yet the legal curriculum, as presently structured, offers little opportunity to reinforce and reward these other, equally important, abilities. Acceptance of their legitimacy would help reduce the apparent conflict between minority cultural traits and the ideal of the successful lawyer and, like some of the other changes mentioned above, would offer the Chicano a chance to gain recognition and reinforcement.

### F. *The Marginal Student*

The normal sequence for dealing with a student who fails to achieve a passing average is probation, then suspension, and, later, perhaps, readmission. Many schools follow the practice of placing the marginal student on probation one semester on condition that he brings his average up to the requisite passing grade. If he fails to meet this condition, he is suspended. Readmission is a matter within the discretion of the faculty, but usually readmission will not be considered until the student has been out of school one year.

The marginal student presents a difficult problem to law schools, but the marginal Chicano or other minority student who has been admitted on a special basis presents an even more difficult problem. Part—but only part—of the reason for the greater difficulty in dealing

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270. See notes 114-17 *supra*.

271. See notes 113-14 *supra* and accompanying text.

272. E.g., A. Ginger, *The Relevant Lawyers* 41, 55-56 (1972); see G. Abrahams, *The Legal Mind* 1-9, 106-16 (1954).

273. Watson, *supra* note 113, at 109, 160-63. See generally Watson, *supra* note 118.

with the marginal minority student is political. A greater percentage of minority students admitted on lower admission credentials tend to present unsatisfactory records at the end of the first year.<sup>274</sup> The result may be a politically volatile situation.<sup>275</sup>

That the marginal Chicano or minority student presents a difficult political problem does not necessarily imply, however, that special consideration is due such students. Still, certain solutions may be devised to ensure that marginal minority students do not flunk out before being given a fair opportunity to make the grade. One solution may be to extend the length of the probationary period.<sup>276</sup> Another is the establishment of special educational programs, either supplementary or remedial, for students on probation.<sup>277</sup> Most important, perhaps, is the need for flexibility in dealing with such students, both minority and nonminority. Law schools should be sensitive to the particular difficulties encountered by the individual student, and whenever possible, devise special programs to assist the student in overcoming his difficulties.

On the whole, however, no distinction should be made between Chicano students and nonminority students on the basis of academic standards. Both should be held to the same standards. Dual grading standards are not acceptable to the Chicano student, his Anglo classmate, or the Chicano community.

The institutional programs suggested above are in no way talismanic, nor does their adoption guarantee that the school will be populated with happy, diligent, multi-hued individuals working to-

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274. Of the 1,042 students specially admitted to 79 law schools in the fall of 1970, 606 advanced in good standing into the second year and 222 were placed on probation. Thus, a total of 828, or 79 percent, proceeded into the second year. Stevens, *supra* note 242, at 1. Of the 828 disadvantaged students who started their second year in 1971, 587 or 70.9 percent advanced into the third year in good standing and 120 or 14.5 percent advanced into the third year on probation. Thus, 707 or 85.4 percent advanced into the third year. *Id.* at 16. Of the 531 disadvantaged students in good standing that actually enrolled in the third year in the fall of 1972, 50 or 9.4 percent failed to graduate, of the 74 on probation who enrolled, 29 or 39.2 percent failed to graduate. *Id.* at 21. In summary, of 1,042 disadvantaged students who were admitted in the fall of 1970 to 79 law schools, 96 withdrew voluntarily, 39 were dismissed but readmitted, 154 were dismissed and not readmitted, 167 have disappeared from the study, 178 were still enrolled during the 1973-74 school year, and 408 or 39.2 percent graduated in the spring of 1973. *Id.* at 23.

275. See, for example, the charges of discrimination that resulted when all of the black students at a large state university were placed on academic probation. 1973 AALS Proceedings, *supra* note 258, at 145-46.

276. The experience of Emory Law School's pre-start program suggests that law schools should avoid a premature judgment of failure. Gozansky & DeVito, *supra* note 131, at 740.

277. The study of the progress of disadvantaged students admitted to law school in the fall of 1970 through their second and third years shows that a number of schools have adopted special educational programs for students in academic difficulty. Stevens, *supra* note 242, at 3-4.

gether in harmony. So long as society is afflicted with racial animosity and economic inequity, the law school will feel the divisive effects of these forces. All the school can offer the student is a sensitivity to diverse cultural viewpoints, a willingness to restructure itself when necessary, and an opportunity to become a lawyer. If it conscientiously applies itself in these directions the school will win the students' acceptance, and, perhaps, in the long run, their respect.



