HAWAII LAW SCHOOL STUDY

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Report No. 3, 1971

LEGISLATIVE REFERENCE BUREAU

UNIVERSITY OF HAWAII
Honolulu, Hawaii 96822

Price $2.00

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SUMMARY

Cost benefit analysis of a law school for Hawaii measures the expense of setting up and operating a law school against the monetary and secondary benefits anticipated (pp. 3-5). The cost elements of a three-year, conventional law school are fully outlined in the Warren and Mearns report, "School of Law, University of Hawaii: Its Feasibility and Social Importance", which was before the Hawaii State Legislature in 1970 (pp. 5-10).

The Warren and Mearns report underestimated the size of the proposed law school. A qualified student body of approximately 250 can be anticipated when the three-year school is fully operational, graduating about 75 students a year (pp. 10-17).

After adjusting cost estimates to accommodate the larger student body, and making other revisions, at present prices it would cost about $3,460,000 to construct a law school building, and another $500,000 to assemble a law library. When fully operational, running costs would be $838,900 annually. Practically all of these fixed and operating costs would have to be borne out of State moneys and tuition (pp. 17-26). If tuition is set at $1,600, as recommended by the W & M report, this would reduce annual operating costs to $438,900 (p. 71).

"For the prospective law school student, the most immediate benefit gained through establishing a...[three year] law school in Hawaii is the marked augmenting of his opportunity to obtain a legal education. In part this results from minimizing the obstacles of expense and physical distance which prevent some qualified candidates from going to the mainland to study. And in part this flows from offsetting the trend which has seen an ever narrowing of the chances of Hawaii students' applications being accepted by mainland schools. Indeed, if a law school is not planned for Hawaii, in the not too distant future, the State faces the prospect of only a small proportion of Island students capable of matriculating at a law school being competently prepared for the professional practice of the law. To the extent a larger group of students succeeds of admittance, it will be only after they are shunted to schools of 'minimally acceptable quality' which deny them a legal education appropriate to their capacities" (pp.28-40).

Monetary benefits are problematical. The extra income a lawyer receives over his lifetime will far exceed the total cost of his legal education. The additional taxes which he pays over his lifetime, derived from this extra income, may return to the State the cost of his law school training (pp. 40-43).

Secondary, non-monetary benefits are of more general nature. The contributions of law school faculty, services of law students, and critiques of the law school journal will aid improvement of the law and administration of legal institutions. The continuing education of the Hawaii Bar will be facilitated. Programs for the disadvantaged and comparable other forms of social action will be assisted by staffing with law students. Not alone will students from lower income backgrounds have greater opportunity to attend law school, but this will keep the Hawaii Bar representative of Hawaii's peoples (pp. 43-47).

Estimates of need on the mainland for lawyers and the legally trained indicate good employment prospects through the 1970's. All comparative data available point toward a relative shortage of lawyers in Hawaii (pp. 48-58).

For nearly a century, law school curricula have followed a pattern set by a few "national" schools. Due to a number of causes, curricula and pedagogy are now undergoing major reconsideration. In light of the current ferment in legal education, any attempt to distinguish between "innovative" and "traditional" law schools is to draw an artificial distinction (pp. 59-67).

Besides the conventional, three-year graduate professional school, a number of other forms may be considered. The Ehrlich and Manning report, "Programs in Law at the University of Hawaii", proposes an initial third-year professional legal education in Hawaii; para-legal training and continuing education for the Bar; and a grant or loan program to aid those going to the mainland for their first two years of legal schooling. Its total annual operating cost for legal education in Hawaii would be less than under the Warren and Mearns conventional model; the per-student cost for professional legal education would be higher. The Ehrlich and Manning report contemplates ultimately establishing a full three-year program in Hawaii; meanwhile, a law school building and library would be postponed (pp. 68-70).

Some of the alternative law school "models" are complete substitutes for a conventional law school; others are not mutually exclusive, and may be combined, as illustrated in the Ehrlich and Manning proposal:

--in lieu of setting up a law school in Hawaii, a financial "facilitating" model would meet the cost of legal education on the mainland through a system of grants or loans to students. For example, the $438,900 estimated net annual operating costs to the State of a conventional three-year school would pay the tuition and fees of about 290 Hawaii students attending an average mainland law school. At least initially, their enrollment could be facilitated through WICHE (Western Interstate Commission for Higher Education) (pp. 70-75).

--the existence of evening law schools on the mainland draws attention to the appropriate time model to adopt. Part-time, night law school aids attendance of working students, but has countervailing pedagogical and administrative disadvantages. A mixed full-time and part-time day law program may be a substitute for night school (pp. 75-77).

--foreign institutions teach law as an undergraduate subject, which suggests the fully undergraduate model. However, its adoption would be contrary to the whole development of law training in the United States, which has been toward moving professional legal education to the graduate level, after completion of a general undergraduate degree (pp. 77-78).

--a "multi-track" legal training model would have the University furnish not only professional legal education but para-legal training for legal secretaries, claims examiners, etc.; continuing education of the Bar; and other forms of legal education. The different tracks would be offered on various campuses of the University at the appropriate undergraduate, graduate, and post-graduate levels. Since the place of the para-legal in providing legal services is yet to be standardized, professional legal training faculty would be central to this model. For the most part, the expense of other tracks would be in addition to that of educating future lawyers, but the participants in some could be expected to bear the cost of their own training (pp.79-85).

--a "truncated" model would provide only part of a standard three-year legal education in Hawaii, requiring students to obtain the balance of their training on the mainland. This would have the advantages of assuring "broadening" from a mainland stay and a potential reduction of expense to the State for legal education. Countervailing would be school accreditation problems and difficulties of Hawaii students in obtaining acceptance by mainland law schools. Under the Ehrlich and Manning proposal, only the third

year of law school would be in Hawaii; other combinations for dividing the educational program between Hawaii and the mainland are also possible. A consortium arrangement with an established school could meet the difficulties of this model, but would raise costs (pp. 85-90).

--an "integrated" model would minimize the separation of the law school from the rest of the University, directing cross-disciplinary concern to teaching and research in the law. Various aspects of law would become part of a liberal education, with the place of law in society emphasized for all students. Undergraduate education would overlap the professional program, and a prospective lawyer by taking his major on law could complete an undergraduate degree and graduate training in six years. The disadvantages of the "integrated" model stem from its originality, and the uncertainty of accreditation (pp. 90-94).

INTRODUCTION

The decision of whether or not to have a law school in Hawaii depends upon weighing the answers to a number of questions. Chief among them are: what type of law school, what will it cost, and what will be the benefits? This report addresses itself to these and a number of related matters.

To provide perspective, it is first necessary to discuss briefly the scope and limitations of cost-benefit analysis. Attention then is turned to estimating the dollar costs of erecting and operating a law school in Hawaii. Used for this purpose is the conventional, three-year law school proposed in the Warren and Mearns report, "School of Law, University of Hawaii: Its Feasibility and Social Importance" (Warren and Mearns, 1969), but modified so as to incorporate more relevant data. The size of the law school student body is particularly important in determing costs, so consideration is given to projecting the number of students who can be expected to enroll for legal training in Hawaii.

Benefits from having a law school in the Islands would be enjoyed by the students, the members of the Hawaii Bar, and, more generally, the entire community. For the prospective student, the immediate impact is the opportunity afforded to obtain a quality education. A partial measure for this benefit is provided by the Hawaii student's diminishing chances for enrollment in a mainland law school. Also pertinent is whether education on the mainland is a viable alternative for students with limited financial resources.

In monetary terms, the increased income of the lawyer represents a measurable benefit. The community also gains through increased taxes. Beyond this, potential monetary benefits are highly conjectural.

For secondary benefits, attention turns to the non-teaching functions of the faculty and both the co- and extra-curricular activities of the law students. In addition, through encouragement of wider Island recruitment to the study of the law, the composition of the Hawaii Bar may be affected.

Fundamental to consideration of a law school is whether there is need for legally trained persons. For the mainland, employment projections serve this purpose. For Hawaii, a tentative judgment may be reached on comparative data and limited survey findings.

Also relevant to consideration of a law school for Hawaii is what it ought to teach. Here, again, the Warren and Mearns report

provides a convenient starting point. However, both curricula and pedagogy of mainland law schools are undergoing major reconsideration, and a school established in Hawaii will find a diversity of emerging patterns to follow.

Finally, attention is turned to other forms of law school beside the model of the conventional, three-year, graduate professional institution. An evening, part-time law school or a wholly undergraduate school may be considered as an alternative. A complete substitute might be found in the form of financing students' attendance of mainland law schools. A partial substitute suggests itself in the form of teaching one or two years of classes in Hawaii, and enrollment in a mainland law school for the balance. The scope of the law school may be expanded so as to include para-legal training and other forms of legal education. And the whole approach to the teaching of law as a separate discipline may be reexamined, so that law as a subject is fully integrated into the warp and woof of the university. Some of these are major components of the Ehrlich and Manning report, "Programs in Law at the University of Hawaii." (Ehrlich and Manning, 1970).

To obtain the data for this study, 4,430 brief questionnaires were completed by upper classmen registering on the Manoa campus in the Fall of 1970, 98 Hawaii-educated persons who took the Hawaii Bar examinations over the last 3 years were questionnaired, 51 community service organizations on Oahu responded to queries, 22 governmental agencies employing attorneys on Oahu were contacted, questionnaires were mailed to 145 accredited law schools on the mainland United States, 20 law schools and legal education related organizations were visited, and 30 persons were interviewed from coast to coast. All this was supplemented by an extensive search of the related literature on legal education.

Chapter I

COST BENEFIT ANALYSIS

To establish a law school at the University of Hawaii would represent a "sizeable financial commitment...on our State resources." Accordingly, the 1970 Hawaii State Legislature refused to act on such a request "without carefully examining the full implications, financial and otherwise." To this end, it was recommended that the Legislative Reference Bureau "conduct a cost benefit study of the University of Hawaii law school proposals..." (State of Hawaii: 19).

The precise meaning of "cost benefit" tends to vary with the particular context in which it is found (Novick, 1965:311). As used in the Conference Committee Report, it apparently is to rationalize policy-making by providing data on the costs and benefits of attaining public objectives. The furnishing of legal instruction and associated services through a law school, such as that proposed in the Warren and Mearns report for the University of Hawaii (Warren and Mearns, 1969), must be viewed as the vehicle for achieving a public policy goal, rather than the setting up of the school as constituting that goal. Analogously, should a desired public objective be to raise the prestige of the State of Hawaii in the eyes of the Nation, conceivably one way this might be accomplished would be through erecting a law school and thus joining the Islands with the overwhelming proportion of States[1] which now enjoy that status. However, even when viewed within this perspective, the law school remains but a program to the end of Hawaii's attaining greater stature.

To those familiar with welfare economics, the rationale of this budgetary approach is clear: changes which increase the net amount of economic production available may be deemed to improve economic welfare. "In appraising a specific contemplated action...we are... asking the double question: Do the gains to the beneficiaries outweigh the losses to the rest of the community, and hence, do the benefits exceed the costs to the economy as a whole?" (Weldenbaum, 1966:34). With relation to a specific program, "a long view is taken in that costs are estimated not only for the immediate future but also for the life of the project. A wide view is taken in that

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[1] Only the States of Alaska, Delaware, Hawaii, New Hampshire, Nevada, Rhode Island, and Vermont do not have law schools. All but Rhode Island have smaller populations than Hawaii, and all six have more lawyers per population than does Hawaii (Weil, 1968:34, Table 11).

indirect consequences for others...are considered" (Wildavasky, 1966: 293). Encompassed are intangible "secondary" benefits, although there is disagreement on how they should be included, since they are not measured in terms of economic efficiency (here see Maass, 1967: 224). The whole approach is to emphasize a single value, the efficiency criterion, so that "the cost-benefit formula does not always jibe with political realities--that is, it omits political costs and benefits..." (Wildavasky, Op. cit., 298).

Identification of the input elements in aid of determining the costs of a law school program raises relatively few conceptual difficulties. "...[T]he total quantity of manpower, facilities, equipment, and materials applied to the program, expressed in either units or dollars, is the program input" (Greenhouse, 1966:275). For a law school, budgeted costs would consist of fixed elements (site preparation, plans, construction, initial library acquisition, and equipment essential before the school may get underway) and operating expenses (input elements of personnel expenses, supplies, equipment, etc., required for the continued functioning of the institution). The usual procedure is to spread the installation costs over time, thus treating them in a way analogous to annual costs; to them are added the annual operating expenses; and the total is then measured against the estimated benefits expressed in annual terms. This whole process, of necessity, tends to dismiss those costs which do not easily, if at all, lend themselves to dollar-and-cents analysis. For example, placing of an additional building on the Manoa campus promises to add to the density of its student population and further reduce its open spaces; probably no dollar value can be assigned for these restrictions on student mobility or reduction in aesthetic enjoyment, and only through some relatively arbitrary assignment of weighting could there even be attempted any calculation of the additional traffic control expenses to be incurred, the increased construction costs for the rest of the campus due to the extra heights to which new buildings will have to be raised on the remaining unused sites, etc.

Turning attention to the identification of "benefits", greater technical difficulties are encountered. Potentially, a wide array of outputs will be derived from institutionalizing legal education in Hawaii. Some of the benefits are personal--economic and psychic--as the gains enjoyed by the student, his immediate family, or his employer. Other of the outputs are completely social: the quickening of the legal profession's concern for technical amendments in the law as a product of trenchant law school journal critique.

Some forms of benefits are amenable to expression in market (dollar) terms; for "secondary benefits", those not fitting within objectives relating to economic efficiency, monetary measurements are wholly inappropriate. What is the value to the State of Hawaii to have the assurance that there will be sufficient law-trained persons in its population to permit the election from their number of legislators qualified to grapple with problems of the greatest complexity?

Those who, like Professor Milton Friedman of the University of Chicago, would have students pay for their full cost of higher education, "except for smoothing of access to loan capital and possible provision of subsidy to those of low income", (Balderston, 1970:13) are in effect ignoring the social benefits gained from higher education. Perhaps this may be necessary, if dollar-measured evaluation is to be undertaken, but it only points up the inadequacy of relying solely upon cost-benefit analysis in reaching decisions on such questions as whether Hawaii ought to have a law school. Limiting principally to law the more general plaint penned by Professor Tollett,[2] but not intending thereby to misconstrue his remarks:

> How do you really evaluate or measure the services rendered to individuals and societies by doctors, lawyers, social workers, and ministers?... Inherent in the traditional notion of profession is public and civic service, special learning, and high standards of ethical conduct. Thus, it used to be more important for a doctor or a lawyer to save a life than make a fee....Although technical efficiency has always been important for the professions, economic efficiency has not.... But alas...medicine and law are going more and more commercial and, thus, are inviting conventional economic analysis....I suppose it is difficult for higher education, just as for other institutions and professions, to resist the inexorable forces of an urban-industrial society. To the extent higher education can avoid being just another economic entity it can invite standards of traditional, qualitative evaluation rather than economic quantification (Tollett, 1970:63, 64).

1. Law School Costs

"...[L]egal education, as presently pursued, is the least expensive of all professional education in terms of student-teacher ratios, relatively modest hardware requirement, and auxiliary services" (Miller, 1968:302). Unlike other graduate colleges, the law school receives little institutional funding for the support of research.

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[2]The article of Professor Tollett is addressed to the broader subject of higher education.

In effect, a disproportionately low, per hour cost of education provided by the law school has helped to subsidize the higher-cost education furnished in the other colleges of the university.

"But the operation of a modern law school cannot be conducted on the budgetary scale of the turn-of-the-century law school. Specialization and diversity of curriculum require a larger faculty than the earlier models, and a movement toward small-group instruction reinforces that trend. Modern legal research requires faculty time, thus adding to the need for larger faculties" (Manning, 1969: 1126). The law library of a modern law school must need encompass a wider range of materials. Higher starting salaries are requisite to attract competent young law school instructors. All signs point toward the per-pupil educational costs of the law school coming much closer to, if not approximating, those of the average graduate student working towards his Ph.D. degree.

Each law school's costs will vary, depending upon such factors as the content of its curriculum, the pedagogical methods employed, the size of the student body accommodated, the nature of the plant, the "extra" activities outside the scope of instruction, and the relative point selected along a penury-opulence scale at which to peg the whole undertaking. A student population of 150; taking a program modeled closely on that conventionally offered in the law school; the instruction employing the case method, the problem method, and lectures, as appropriate; each unsectioned class enrolled in 51 required credit hours (12 courses) during its freshman and second years, so that its members have the option of 6 elective units during the second and 27 units during the senior year; the fairly standard 27 elective courses and seminars proposed for the curriculum contemplating minimal clinical training or other form of expensive instruction; and plant constructed on a static plan anticipating little growth--in brief, the law school model as proposed for Hawaii by Warren and Mearns (Warren and Mearns, 1969)--will be relatively low cost. In contrast, the same sized student body, receiving instruction in small sections from the outset, the curriculum ranging widely, and pedagogy designed to encourage a considerable amount of unstructured individual and student-student learning will necessitate a somewhat larger staff than even the generous 9 full-time and 3 adjunct faculty members in the W & M model, as well as a more commodious law school plant affording numerous working spaces and extreme flexibility.

COST BENEFIT ANALYSIS

The W & M model provides a convenient basing point upon which to commence the analysis of law school costs and benefits. It is essentially an averaging of the "better", conventional law schools in the United States, writ small to fit Hawaii. All alternative models must ultimately be considered in terms of the divergence of their major elements, and the effect thereof on anticipated costs and benefits. This approach offers the added advantage of permitting reference to the published Warren and Mearns report for the full details of their model, thus avoiding necessity for repetition here of anything not essential to the analysis of its cost estimates.

In its third year (the first year of full operation with freshman, second year, and senior classes), housed in its own plant, the total annual operating costs of the W & M model were estimated to be $545,300, this without including any capital investment costs for building plant. (In the third year of full operation, expenses increase by $79,500, to $624,800; further projections are not included.) If as a substitute, the Supreme Court Library and the present Judiciary Building were utilized, costs would be only $393,000 in the first year of full operation; this smaller sum makes no provision for library acquisitions and continuations, nor for maintenance of plant. (Correspondingly, in the third year of full operation, using the Judiciary Building, annual operating costs were estimated to be $467,500.) (Ibid: A-14 to A-19). Not included in either set of estimates "are the costs of operating the [recommended] Coninuing Legal Education Program, the Research Institutes, and the Legal Aid Service. These...[would have to be] self-sustaining or supported by public or private grants" (Ibid: 44). Thus, these estimates represent the expense of providing professional education to 120 students in a conventional law school during the first full year of operations, and 150 in the third, together with expense of incidental research and services of faculty, the costs of which are not separately budgeted.

Hereafter, only the set of larger cost estimates will be used for the purpose of analyzing its elements and making subsequent comparisons with alternative models. The justification of the choice rests on pragmatic grounds. It is not unusual for a new law school to delay moving into its own, specially designed building until after it has been in operation for a few years. This, however, does not counter the near essentiality of including building plans in the programming of the law school, even though their implementation may have to be deferred. An attractive, functional building is widely recognized as aiding a new and unaccredited law school in competing

for students and faculty. More subtly, the assist to establishing identity and structuring integration of faculty and student body can be immediately sensed on the plants at Davis, Lubbock, or Tempe, all sites of new law schools which were visited. Even the Warren and Mearns report recognizes this by recommending that if not initially constructed, a new law school plant housing its own library be built in 6 to 8 years after Hawaii's school is underway (Ibid: 44). Additionally, without including provision for maintaining and administering its own law library, a proposed law school would not meet the accreditation standards of the Association of American Law Schools. Since any cost estimate for the W & M model which excludes provision for library and plant is only concealing an expense which shortly will have to be borne, realism counsels utilization of the more costly of the two sets of estimates.

Advantages and Disadvantages of Size. The W & M model contemplates a student body enrollment of about 150 when the law school is fully operational, and at the conceivable maximum, not in excess of 200 (capacity of suggested building--Ibid: 39). Compared with such behemoths among the law schools as New York University and its day and evening student body of over 2,000, or if attention be turned to the West, Hastings and the University of Southern California which each enroll over 1,100 day students, the figure projected for Hawaii appears almost minuscule. However, it would in no sense be unique, for the state law schools in Idaho, Montana, New Mexico, North Dakota, South Dakota, and Wyoming in 1969 all had full-time enrollments of a size comparable to that estimated for Hawaii. If the comparison be broadened to include all schools, about an eighth of all day schools and a sixth of all accredited law colleges in the United States in 1969 did not enroll more than 200 full-time students. Reassuring as these figures may be, nevertheless size remains a very significant element.

There are advantages of size which must be foregone with small enrollment. These resolve themselves essentially to the benefits gained from enrichment flowing from numbers and diversity. The larger school may enjoy curricular variety--in course offerings, content, and approach. Correlatively, the supporting resources of a large school permit the range of specialization attractive to the most competent faculty. Greater variety in research activity also is related to size; the opportunities are more than proportionately augmented for faculty interaction and mutual undertakings (Report of the Advisory Committee, 1968:8). Similarly, a larger student body may have a more diversified interest, which would assure adequate

attendance and participation in a broader range of courses and seminars. Co-curricular programs which are standard in American law schools, such as practice courts and the publishing of a law journal, become more feasible once the critical student body size has been exceeded. All these are in addition to the economies of size, which see the investment in plant, library, and other fixed items on the average put to greater use the larger the student body.

On the other hand, much is lost in legal education as law school size begins to limit, if not preclude, the interaction of students with each other and with the faculty. Even though the student-faculty ratio may be kept constant, as the total student body grows, the number of student contacts per faculty member tends to decrease. Time for faculty interrelationships replaces that allocated to becoming acquainted with students in a smaller school. And as to students, themselves, once sectioning becomes necessary, group sharing is reduced and students become isolated from each other. Counterweighing size, a strong case may be made for the small law school.

What is the optimum sized school remains relative: The University of California Advisory Committee concluded that the economic savings were not sufficient to overcome the educational policy considerations supporting a small law school, but to the Committee, "the minimum size for an effective high quality law school is one of the order of 500 students" (Report of the Advisory Committee, 1968:9). The same figure--as a maximum--was prescribed for each "college" of the University of Houston's legal university on the Oxford plan (see Mixon, 1966). Those desirous of a law school in Hawaii may find support in one commentator's reduction of the economic minimum to 200, but it should be noted that he linked inferior educational quality with schools falling below that figure (Dean, 1964:420, 421). To a committee of the Association of American Law Schools, "There is much difference of opinion as to the optimum size of school; but unless an educational luxury is to be provided, a student body of from 300 to 500 is required" (Committee on Guidelines, 1967:10). Certain it is that Warren and Mearns held it doubtful that a law school in Hawaii could attract anywhere near 300 qualified students in its formative years (Op. cit., 22). But considerable change has occurred in the period of time subsequent to that on which the data in the Warren and Mearns report relies; the statistics now available question their student estimates as too conservative, and their cost estimates as too low.

Student Body Size in Hawaii. If available, data on the number of students from Hawaii enrolled in law schools on the mainland would provide the best basing point on which to compute the size of the potential student body for a Hawaii law school. Responses from 95 law schools in the Legislative Reference Bureau's survey disclosed 100 Island students registered in 38 schools, another 52 schools with no students from Hawaii, and 5 additional schools unable to provide a response to this question. Given the number and size of the schools which failed to return their questionnaires (50, plus the 5 without applicable data), permits a conservative estimate of at least 150 law students identified as residents of Hawaii who are enrolled on the mainland. Probably the actual figure is greater due to change of residence on registration records to avoid higher non-resident tuitions. For the Fall term, 1970, 28 schools reported accepting 78 Island students, but of course there would be an unknown number of multiple applications included. This takes no account of 64 law schools (the balance of the 145, after excluding 53 which reported making no acceptances) which probably had responded favorably to at least another 50 to 70 applications from Hawaii students. Cumulatively, these data lend credence to forecasting a student body for an Island law school, once fully operational, at considerably over 150.

The W & M law school model projects an enrollment of 40 students in the first-year class at the opening of school. By the 5th year, the freshman class will have grown to an estimated 60 students; as the biggest classrooms are proportioned to seat 75, presumably at some future date the largest class may eventually reach that size. The initial figure of 40 students appears to be linked with the fact that about twice that number of all persons taking the LSAT (Law School Aptitude Test) in Hawaii, recorded LSAT scores of 475 or higher. Apparently it was assumed that they would also have GPA (grade point average) scores of at least 2.5 (midway between C and B). Both measures represented modal scores preferred by the greatest number of schools in 1965 as their recommended minima (Lunneborg and Radford, 1966:314). Although these cutting scores fall below the practices of the most prestigious schools, they need no apologia, in part because LSAT scores do not correlate highly with law school performance (see Goolsby, 1968:421; Goolsby, 1968a:175; compare with Lunneborg and Radford 1966:313, n.2). They must be regarded as meeting the Warren and Mearns admonition to "adopt admission policies designed to select those applicants adequately equipped to study law" and to resist "the temptation facing a new school to cut corners in admission requirements" (Op. cit., 24, 25).

COST BENEFIT ANALYSIS

In Hawaii, like elsewhere in the United States, the annual total of LSAT sitters has continued to rise, so that the base of the Warren and Mearns estimate is now out of date. From November 1969 to July 1970, 211 persons took the four LSAT examinations given in Hawaii;[3] of their number 95 reported the University of Hawaii as their graduating institution.[4] From the latter group, a total of 73 students scored 475 or higher, and after those with GPA scores of under 2.5 were eliminated, 58 remained. But since 1965 the median LSAT scores of students have risen, and the practices of law schools have demanded an even higher level of test performance for admittance. The Legislative Reference Bureau's survey indicated a modal 500 LSAT (21 law schools out of 80 responding to this question)[5] as a more appropriate cutting score, thus while still continuing to follow the rationale of the Warren and Mearns report. Using the higher cutting score disclosed 61 University of Hawaii graduates taking the 1969-70 LSAT examinations in Hawaii with a score of 500 or higher, of whom 49 would be qualified, potential law school candidates. Assuming the balance of the persons sitting for the LSAT in Hawaii during this year (116) registered the same proportion which met the minimum LSAT and GPA criteria, there were approximately 109 qualified persons of the total 211 who were potential applicants for law school in the Fall of 1970.

Of course, all 109 would not have enrolled in Hawaii. Those who sit for the law school aptitude examinations may not proceed

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[3]Multiple examination takers were counted only once, at the time of their initial examination.

[4]Actually, some persons reporting the University of Hawaii as their graduating institution sat for the LSAT examinations outside of Hawaii. They are not included within the 95 above reported. Their total number is unknown, but 8 such persons have been so identified. Almost all of the 211 persons physically taking the LSAT examinations in Hawaii in 1969-70 had at one time or another enrolled in the University of Hawaii--as undergraduates, graduates, summer session, continuing education, etc.

[5]In the Legislative Reference Bureau survey of law schools, it was found that the modal minimum GPA has continued to be 2.5 (17 of 78 schools) but that the modal minimum LSAT score has risen to 500 (21 of 80 schools). As some institutions apply an admissions index which requires low LSAT scores to be balanced by higher GPA scores and vice versa, reference to a single minimum may be misleading.

beyond that stage to even filing applications.[6] In addition, account has to be taken of the appeal of active recruiting campaigns mounted by mainland institutions, as well as the prestige to be gained by attending them. Until the reputation of a law school at the University of Hawaii is fully established, a goodly fraction of Island-educated students who can obtain the necessary financing will opt for law training outside of the Islands.

To develop a measure for discounting the number in this potential pool of law school applicants, so as to arrive at a more realistic figure for an Island school, all Hawaii-educated persons (high school, college, or both) who were admitted to the Hawaii Bar over the last three years (1968-70) were asked a series of attitudinal questions.[7] Recently graduated, of all attorneys they should be the ones most able to respond to the relative attraction of mainland law education. Assuming that the University of Hawaii had a law school with a reputation approximating that of the school from which they were graduated, a majority (54 per cent) would have preferred to take at least part of their undergraduate and <u>all</u> of their legal education on the mainland. Thirty per cent indicated they would have favored returning to Hawaii for law school after some undergraduate schooling on the mainland; the remaining 10 per cent would have opted for both undergraduate and law school education in the Islands. However, the combined numbers of the latter two groups are reduced to only 22 per cent if the reputation of the hypothetical Hawaii law school were not particularly distinguished or if the law school were just being set up.[8]

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[6] One mainland study of those who participated in the 1964-65 LSAT indicated that only 79.4 per cent went on to apply for admission to a law school (Student Wave Survey, 1968<u>a</u>:5). How many of those who dropped out were at the lower range of the scoring scale was not noted.

[7] A 71 per cent return on 97 mailed questionnaires. (In all, 98 persons fell into this class; however, as one indicated he had practiced elsewhere for a long period of time, so did not come within the intent of the survey, the number used was 97.) This distribution over the three year period was, respectively--admitted 1968: 64 per cent; 1969: 61 per cent; 1970: 84 per cent.

[8] "Would your answer...have been different if the reputation of Hawaii's law school corresponded to that of a publicly-supported law school which was part of an average municipal university, conducting both day and evening law courses?"

Preferences of Hawaii-Educated Attorneys Admitted 1968-70 (In Percentage)

Mainland undergraduate and law school	54
Hawaii law school, some mainland undergraduate	30
--but if during first 5 years of law school	--13
--or if Hawaii reputation not part. dist.	--15
Both Hawaii undergraduate and law school	10
--but if during first 5 years of law school	-- 9
--or if Hawaii reputation not part. dist.	-- 7
Other	6

Irrespective of their attitudes supportive of their own attendance at a mainland law school, the predominant response (64 per cent) favored establishing a law school in Hawaii over the alternative policy choice (17 per cent) of "funding a 'study-abroad' plan by which Hawaii residents would attend a mainland law school on a partial state grant conditioned upon returning to Hawaii to work." ("Other", 19 per cent). The reasons advanced fit within a number of broad categories: providing legal education in Hawaii for those who cannot afford the extra cost of mainland education or unable to leave the Islands for other reasons; research and inquiries into Hawaii's laws and legal problems, as through a law review; provision of an assured supply of lawyers to Hawaii; furnishing continuing education to Hawaii's Bar; community service of law professors and their students; and opportunities for advancing knowledge, as through a comparative law center. These responses tended to emphasize the value of a law school as a service institution for the practicing Bar and the community in general. Cumulatively, they did nothing to counter the impression that Hawaii's law school would face strong competition from the attraction of mainland education, and at least initially be identified as an institution for those who cannot--for many reasons--leave the Islands for legal training elsewhere.

The responses of current University of Hawaii undergraduates in a recent survey go far to offset the dampening effect of the

attitudes expressed by the recently admitted members of the Bar. If the young attorneys be regarded as bearish on a Hawaiian law school's drawing powers, the students are positively bullish. A questionnaire response by 4,330 seniors and juniors[9] while registering on the University's Manoa campus in the Fall of 1970 reveals that 1,118 had at some time thought of attending law school, 269 were planning to go to law school on the mainland after graduation,[10] 589 indicated they would attend a law school if there were one in Hawaii, and that 71 had identified at least one mainland school to which they would apply. If the same distribution holds for all 7,651 upper division classmen presently on the Manoa campus, about 380[11] could be expected to express an intention of attending a school on the mainland and some 832[12] in enrolling in law school were one to be established in Hawaii.[13] When computed for seniors alone,[14]

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[9]With 5,400 questionnaires distributed in registration packets, this represents an 80 per cent return. Only seniors and juniors were questionnaired as there is evidence that the bulk of the students decide to study law less than two years before their entry into law school. (Conference on Legal Education 1959:153). Insofar as could be determined, the sample was representative of the entire Manoa upper division student body, except for late registrants.

[10]Apparently a few misinterpreted "after graduation" as meaning "immediately after graduation", and because they were planning on deferring enrollment, as for military service, replied "no" to this question.

[11]380$\pm$ 5 at 95 per cent level of confidence.

[12]832$\pm$ 63 at 95 per cent level of confidence.

[13]Computed on the basis that (i) the 20 per cent of the sample which failed to return questionnaires should be coded as not having any interest in attending law school, (ii) correspondingly, only 80 per cent of the total 7,651 seniors and juniors enrolled in the Fall, 1970, Semester should be included, and (iii) the distribution of the sample should be applied to these remaining 6,121 upper division students.

[14]There were 3,510 seniors and 4,141 juniors; it has been assumed that the distribution of seniors intending to attend a law school and also expressing interest in a Hawaii law school follows that of the total sample.

this would represent, respectively, about 174 responding that they were intending to enroll in a law school upon graduation, and, in all, some 382 seniors stating similar interest if there were a law school in Hawaii. This compares with the 95 University of Hawaii students (graduating or graduated) who took the LSAT examination during the previous academic year in Hawaii.

The student survey undoubtedly overstates the number of potential law school applicants, although how much can only be surmised. What is more certain is that the students' responses should be read as cautioning against placing too heavy a reliance upon the attitudes of the recently admitted lawyers, when estimating the prospective size of a Hawaii law school. Of the 269 upper division students in the 4,330 sample replying affirmatively to the question, "Will you attend law school after graduation?", only 52 expressly or impliedly rejected enrollment in an Island-based school. As an additional 320 students in effect indicated they would seek legal education only if there were a school in Hawaii, this evidenced far greater support for entering a law school in Hawaii than shown by the lawyers' poll.

Cost and convenience undoubtedly were elements in Island undergraduates matriculating at the University of Hawaii. Given the greater expenses of mainland graduate education, the same reasons ought loom even larger in influencing their enrollment in a Hawaii-based law school. With approximately 49 qualified University of Hawaii students taking the LSAT examinations in 1969-70, there is conservative[15] reason to believe that half of this number (25) would enroll in a Hawaii law school. Assuming that an equal proportion of the qualified non-University of Hawaii graduates taking the LSAT in 1969-70 in Hawaii (60) opt for attendance in Hawaii's law school--also the assumption found in the Warren and Mearns report--this would add another 30 to the freshman class.

With respect to Island students who went to the mainland for their undergraduate education, after four years of college some of them will find resources running low. If for no other reason, a law school near home becomes attractive. On the basis of the poll

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[15]The poll of juniors and seniors revealed strong support for enrolling in a Hawaii law school. With such a school underway, undoubtedly more qualified students would be encouraged to take the LSAT in Hawaii, which contributes to the conservatism of the estimate in the text.

of recent Bar admittees, and of estimates of Hawaii residents who took the LSAT examinations on the mainland,[16] adding five qualified enrollees from this group for the first year appears reasonable. Finally, how much this total of 60 could then be augmented by non-resident recruits coming from the mainland would materially depend upon the extent to which the Regents of the University or the Hawaii Legislature sets quotas on out-of-state students, or pegs the rate of non-resident legal tuition so high as to discourage their application. Assuming that for reasons of easing administration their numbers are initially held to a token group of 5 high quality applicants, this fixes the estimated size of the first freshman class at about 65. Thereafter, as the reputation of the law school becomes established, the number of freshmen enrolled ought grow as more Hawaii students elect to attend the local school over a mainland institution of inferior status. The freshman class size will also be augmented as more applications are accepted from non-residents. Again referring to the Warren and Mearns report, it does not appear unwarranted to anticipate a steady expansion in the freshman class, with about a 50 per cent increase within five years.

If the size of the freshman class is then held at around 100, this would presage a student body of some 250 in the sixth year (fourth year of <u>full</u> operations). The attrition estimates perforce are somewhat indefinite. At least during the first few years of the school's existence, applications from Hawaii residents will be skewed to the students who cannot hope for acceptance at the "better" or most prestigious institutions on the mainland, as well as encompassing those students whose financial or personal affairs require them to remain in the State. The latter will embody a wide range of capacities; by adverse selection, the former will tend to cluster toward the lower extreme of the cutting scores. The easy solution would be to admit all marginal cases, and then set so high a performance standard as to weed out a sizeable fraction. However, it has come to be recognized that the psychological and economic impact of failure on the part of law school students must also be taken into account; a high attrition rate now as much points to inadequacy of a law school's selection mechanism as constituting a mark of law school excellence. Thus, it has been here assumed that after a few trial ministrations during the first years, when attrition rates

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[16] This, too, is a conservative estimate, as more than half (53) of the 98 persons admitted to the Bar 1968-70, who had either high school or college education (or both) in Hawaii, did not attend the University of Hawaii, but went to the mainland for their undergraduate education.

will be higher, the loss between first and second year classes will not exceed one-sixth, and an additional one-ninth will normally cover the reduction in senior class size.

It may be objected that the projection of the student body size primarily rests upon past enrollments to take the LSAT examination, and that there is no assurance that future participation in the examinations, like the stock market, will not drop. For the Nation as a whole, as best as can now be estimated, it is unlikely that in at least the next decade there will be any major decline in absolute numbers in either the totals of LSAT examination sitters or law school enrollments--although the rate of increase will materially slacken. (This is discussed at length; infra, pages 28-32.) For Hawaii, campus plans call for the University of Hawaii's present senior class to increase from 3,510 on the single Manoa campus to 5,070 on all three, four-year campuses by the year 1976. This 44 per cent increase but reflects the youthful composition of Hawaii's population, and its expanding need for education and vocational outlets. Given the general estimates for the Nation, it is relatively unlikely that the State will suffer any material reduction in the number of Hawaii students who will take the LSAT examination and later apply for admission to law school. Bolstering this optimistic appraisal is the experience of the new law schools on the mainland which on opening found applications running higher than anticipated, and with some commencing with larger classes than planned.

Cost Analysis of Warren and Mearns Model. The three major cost components of the W & M model are library, personnel, and plant construction. All three were premised upon a student body enrollment of 150 students, once the law school became fully operational. Since the pedagogical advantages and economic efficiencies to be gained counsel increasing the projected size to the full 250 students which now appears feasible, the estimated budget must be correspondingly modified so as to take this expansion into account. In the process, analysis of the various expense elements indicated that they are underestimated due to price changes and other reasons, so that other adjustment is also in order.

Both fixed and operating costs are involved in the library estimates. Reliance was placed upon the AALS' (Association of American Law Schools') minimum standard of 40,000 volumes as the initial library, "at a cost in excess of $300,000." Thereafter, minimum annual expenditure to keep the collection current was estimated by the Association to run around $50,000. The W & M model

budgeted $400,000 over the first two planning years for "books - acquisitions" and then from $50,000 rising to $55,000 annually for "books - acquisitions and continuations" over the next five operational years. For the library to "support not only a program for the first degree in law, but also a continuing legal education program and a program of professional research, then much more substantial expenditure...[would] be expected." Library personnel expense was estimated at $52,000 annually during the planning years, and from $60,000 rising to $71,000 annually over the next five operational years (Op. cit., 33-37; A6-A18).

Expansion of the student body of the magnitude contemplated will not materially effect the estimates on necessary library collection, nor personnel costs associated with servicing the library. However, both require upward revisions in light of present prices, higher AALS standards, and original understatement of library personnel needs.

The Executive Committee Regulations of the AALS, as amended, specify that every law school library should adopt a planned program of expansion that will produce a collection of 60,000 volumes by January 1, 1975 (Association of American Law Schools 1969:21). This would set the goal of a 50,000 volume library on the opening of the law school, and another 10,000 to be acquired in the first two years of operations. Thereafter, annual acquisitions would continue at 5,000 volumes a year, which is at a faster rate than reported by the average school. However, rather than continuing to use the rule-of-thumb unit cost of $10 per volume, a figure around $13 per volume appears more realistic for the annual supplements, once the bulk buying has been competed during the planning years. Recomputed, the initial library cost would total about $500,000 and annual acquisitions run at $65,000.[17] After the first decade of operations, the rate of increase proposed would provide a library of 100,000 volumes. This size would not compare favorably with the large research collections in a few law schools, but would bring the school's library to about the statistical median of all law

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[17] One reputable estimate of cost today for a 60,000 volume library ran $900,000, or $15 a volume.

schools at that time.[18] It is assumed that by the second decade after the founding of the law school, new forms of information retrieval will make further library projections obsolete and require wholly new approaches for library expansion.

LIBRARY COSTS

	W & M Report	Revised
Acquisition costs		
initial	$ 400,000	$ 500,000
annual continuation . . .	50-55,000*	65,000
Personnel costs, annual		
initial (planning years) .	52,000	52,000
operational years	60-71,000*	60-82,500**
Expense (supplies, binding, etc.)		
initial (planning years) .	4,000	4,000
operational years	7,500-8,000*	7,500-8,000**

*estimated maximum on fifth year in operation
**estimated maximum on sixth year in operation

Turning next to analysis of the annual personnel costs of the library as proposed by the W & M report, the rates of pay appear relatively competitive,[19] but over time the size of the library staff

[18] As of 1969 there were 13 law schools with holdings over 200,000 volumes, 5 in the 150-199,000 category, and 20 libraries with 100-150,000 volumes; 41 fell in the 60-99,000 category, another 32 had holdings putting them in the 40-59,000 category, and another 32 had holdings between 40-59,000. Although accredited, another 22 had libraries under 40,000 volumes. (The balance of the schools did not specify the size of their libraries.) From Tables of Statistical Data on Law Schools in the United States [1969].

[19] The proposed beginning salary of $20,000 would place the Librarian in the top quartile of salaries paid by law schools, but very low in the quartile.

may be too small both for the assignments they will face and to obtain the greatest efficiency. On the fifth full year in operation, the law school staff will include only three professionals, one of whom will be the school's Librarian. On its face, this sized complement does not appear out of order, as less than half of all law schools report over three professional librarians on their staffs. However, since the Librarian will also be assigned teaching responsibilities, reference work will probably be divided between the Acquisitions Librarian and Cataloguer, which suggests that one of the three functional areas will be slighted. In terms of efficiency, one professional can to advantage keep at least two staff people engaged, and possibly even three (Gallagher, 1969:33). By the time the school begins graduating its first senior class, a library staff of four professionals, and at least an equal number of clerk-typists, represents a more realistic figure. Thereafter, as the student body expands, the number of clerk-typists can gradually be doubled. For purposes of comparison, Texas Tech Law School now staffs its law library with four professionals and six clericals, Arizona State at eight staff members, and the much larger library undertaking at the University of California at Davis numbers near twenty staff members--all three schools have just started graduating their first classes.

Without entering into the question of what specific courses ought be taught,[20] and the number of faculty members requisite therefor, application of teacher-student ratios provides a rough measure of staffing need. Given the expansion of the student body to 250, and continuing to use the very "excellent 1 to 17 ratio" which the W & M model proposed for the school after it was in full operation, 15 full-time faculty members would be in order in the sixth year, in place of the nine originally budgeted. Today, about three-eighths of the schools with day programs have full-time faculties of 15 or under. For the initial years beyond the planning stage, if the same ratio of 1 to 17 were applied to the larger student enrollment expected, instead of the 1 to 13 formula suggested in the report, the faculty complement would be four to start, and it would than gradually grow (Op. cit., 31, A21). The ratio of two full professors to one non full-professor in the W & M model would be maintained, as law schools traditionally have a heavy complement of full professors. Student Research Assistants would be increased

[20]The number of courses would be the product of staff times hours of instruction, within the academic determined constraint of hours requisite per subject taught.

to ten by the sixth year, while only one Adjunct Professor appears in order with the larger staff.

In addition to this numerical expansion, the rise in salaries since the preparation of the Warren and Mearns report indicates further adjustment ought be made in estimated faculty costs. The average (mean) salary for faculty in the budget of the W & M model falls in the $19,000-19,999 range. Upon the basis of compensation for full-time teachers for the academic year 1970-71 reported to the American Bar Association's Section of Legal Education and Admissions, such salary would fit within the second quartile of average salaries paid by ABA (American Bar Association) accredited law schools. To be within the top quartile, even at its lowest portion, would require average salaries in Hawaii of around $21,000 annually, and this is used in the revised budget. It should be added that to be competitive with the top 10 per cent of the schools, the median salary would have to be increased to near $24,000.

The salary proposed for the law school dean ($33,000) falls within the top quartile of salaries currently (1970-71) paid law school deans, but just barely. To attract an educator with the qualifications essential to build a distinguished institution, a salary initially fixed at around $35,000 may be necessary, as would an assistant dean--registrar's salary of about $25,000. A $35,000 salary would be out of line with that presently paid other deans at the University of Hawaii, so the original figure in the W & M model is retained; there is no comparable constraint on raising the budgeted salary for the assistant dean-registrar from the proposed $16,000 to $25,000.

ANNUAL ADMINISTRATION AND FACULTY COSTS

	W & M Report		Revised	
Planning years:				
Administration personnel costs	$ 65,000		$ 74,000	
expenses	6,500	$71,500	6,500	$ 80,500

	W & M Report		Revised	
Operational years:				
Administration personnel costs	$65 - 78,000		$74 - 87,000	
expenses	14 - 16,500	$ 94,500	14 - 16,500	$103,500
Faculty (includes secs., etc.)	$65-227,000	227,000	$97-363,000	363,000
		$321,500*		$466,500**

*estimated maximum on fifth year in operation
**estimated maximum on sixth year in operation

The Warren and Mearns report made provision for the construction of a 56,000 square foot building. Whether its allowance for both a moot court room and an auditorium ought be retained is a matter which may be debated; so can its assumption of need for 30 square feet per library user (however, here see Metcalf, 1965:12). In any event, experience suggests that law school design is the product of a dialogue between architect and academician, tempered by money (see Lehman, 1967), so that which may be incorporated in the original need-cost estimates does not necessarily continue on to the final plans. For purpose of analysis, therefore, the building components identified as necessary in the Warren and Mearns report are accepted, without cavil, but their number and square footage are increased to accommodate the larger student body and expanded staff.

LAW SCHOOL BUILDING (IN SQUARE FEET)

Usable Space	W & M Report	Revised
Classrooms (3 large; 3 small)	4,800	6,800*
Library (stacks, read. rm., work space)	20,700	22,700
Faculty areas (12 offices, others)	2,900	3,600**
Administrative areas	2,500	2,500
Student activities	2,400	4,000

Usable Space	W & M Report		Revised	
General	6,000	39,300	6,000	45,600
Circulation space (30 per cent of total gross)		16,700		19,400
Total (square feet)		56,000		65,000

*3 100-man classrooms; 5 25-man classrooms
**17 offices, and other uses

Besides estimating space requirements of 56,000 square feet for 150 law school students, the Warren and Mearns report also suggested an "allowance for expansion" of some 14,000 square feet. However, this item is not repeated in the report's construction cost estimates (Op. cit., 43, A22, A23). With a student body of 250, as now appears a more realistic figure, and the plans for the law school building modififed so as to accommodate this larger number, some 65,000 square feet would be a more appropriate size.[21]

The Warren and Mearns report posits law school building costs in Hawaii at $50 a square foot. In addition to these construction costs, capital expenditures must also be made for site development, utility connections, parking area provision, library furniture, and moveable equipment. And to anticipate contingencies, a 10 per cent contingency fund was included. Inquiry addressed to the University of Hawaii's Office of Physical Planning and Construction disclosed that for 1971-72, on a level site without terrain problems, construction costs are anticipated to run about $44 a square foot, this excluding development of plans and incidental charges. As these planning costs average about 9 per cent of total construction, $48 per square foot constitutes a representative figure. Offsite work and contingency will average $4 a square foot and an allocation of 10 per cent of total construction will adequately cover the cost of furniture and equipment.

[21]These estimates are all premised upon those contained in the Warren and Mearns report, modified only as previously elaborated upon in the text.

LAW SCHOOL BUILDING

	W & M Report		Revised	
Building costs		$2,800,000		$2,860,000
Supporting facilities site development, utilities, etc.,	$ 70,000		$260,000	
library furn., equip.	200,000		312,000	
parking area	30,000	300,000	30,000	602,000
Gross Cost		$3,100,000		
Contingency*		310,000		
Total Cost		$3,410,000		$3,462,000

*For revised estimate, in "site development, etc."

During the last few years a number of law schools have constructed new plants, which permits rough comparison to judge the adequacy of the budgeted projections for Hawaii. Alignment of estimates with actual costs is hindered by the lack of exactly identical categories. However, the general conclusion to be drawn from the following data is that the projected size of Hawaii's law school building is modest, but that the higher construction costs per square foot which prevail in the Islands will result in Hawaii's law school building being expensive for a small plant.

COMPARATIVE LAW SCHOOL PLANT DATA*

School	Student Body	Year Compl.	Building (Sq. Ft.)	Sq. Ft. Bldg. Cost	Total Cost	Site, Equip., etc., incl.
Hofstra**	350	1971	40,000	$28	$1,244,000	Yes
Hofstra***	500	--	67,500	$44	3,546,000	Yes
Texas Tech.	585	1970	118,000	$23	3,099,000	Yes
Arizona State	450	1968	80,000	$20	2,250,000	Yes
Davis	500	1968	N.A.	N.A.	2,500,000	Yes
HAWAII	250	--	65,000	$48	3,462,000	Yes

*excludes aquisition of library

**temporary adaption of building

***proposed law school

Non-State Funding. Private foundation support of legal education has been notoriously limited (Committee on Governmental Relations, 1969:69). Only one foundation, CLEPR (Council on Legal Education in Professional Responsibility) is providing aid for the institution of clinical training, and its "grants are small in amount and short-termed" (Kitch, 1969:24). The other foundations exhibit only non-specific interest in legal education, as the Russell Sage Foundation's assistance to programs relating social science to problems of law and legal institutions.

Although public funding is authorized for clinical legal education under Title II of the Higher Education Act of 1968, no money has been appropriated. "Jurisprudence" comes within the purview of the "humanities" in the National Foundation on the Arts and Humanities Act of 1965, but inquiry has disclosed that founding of a law school would not be supportable as a form of law school institutional development. Financial grants may be sought under the Council on Legal Educational Opportunity (CLEO) program to aid minority groups; similarly, Office of Economic Opportunity grants may finance community action and CLEO-type projects which serve as sites for legal education of law students. Institutional development grants on comparative law have been made by AID to a few law schools. The National Institute of Law Enforcement and Criminal Justice has furnished assistance to graduate students whose dissertations showed promise of contributing to improvement of the criminal justice system. However, all are primarily of short run, supplementary character. Even when helping to meet the cost of basic activities of the law school, they are in the nature of "seed money", their continuance highly problematical.

Federal grants and loans have aided in the construction of new law school buildings on the mainland under Titles II and III of the Higher Education Facilities Act of 1963. The Warren and Mearns report contemplated federal public loans of $2,000,000 so that "the University would be required through grants or gifts to make a direct contribution for capital outlay of [only] $1,410,000" (Ibid: 51). National administration policy does not now favor this form of assistance, except for aid in meeting interest costs on money borrowed to finance physical construction and furnishings. The absence of such funding was a major factor in Hofstra's postponing its projected $3,546,000 law school plant and, instead, erecting a much smaller, "temporary" facility at a cost of over a million dollars. Apart from federal payments under the Annual Interest Grants Program to cover interest charges in excess of 3 per cent on

borrowed money (and a maximum on the latter of only 85 per cent of the estimated eligible development cost or 90 per cent of the actual development cost) the financing of a law school plant in the Islands must rest upon the State of Hawaii.

There is also only minimal assistance available to meet other capital and operating costs. Some of the new law schools on the mainland have been very successful in soliciting gifts of books for their libraries, materially aiding them to meet the minimum criterion set for accreditation. The obtaining of money for creating scholarships and student loan funds has also permitted them to offer a student service usually underfinanced by public appropriations. Cumulatively, however, these all are merely minor supplementations. The normal external sources for major funding of higher education--foundation and federal grants--are non-existent, necessitating public appropriations to meet future costs. In short, Hawaii's need for a law school structured in accordance with the W & M model must be evaluated against the knowledge that practically all of its fixed and operating costs must be borne out of tuition and State moneys.

To restate, then, the construction costs of the law school are estimated to be about $3,460,000, and purchase of a 50,000 volume law library would add approximately another $500,000. Annual operating costs will run from about $25,000 in the first planning year to about $156,700 in the third planning year, not including library purchases. Total operating costs jump to $462,500 in the first year with classes, and by the sixth operational year they will be about $838,900 annually. (No item for plant construction or carrying charges is included as part of operating costs.)

REVISED SUMMARY BUDGET FOR W & M LAW SCHOOL

	1st Operational Year	6th Operational Year
Administration and Faculty	$185,000	$466,500
Library	132,500	155,500
Maintenance	103,300	103,300
Retirement, etc.	36,700	83,600
Scholarships	5,000	30,000
Total Operating Expense	$462,500	$838,900

When fully operational, with about 250 students, the W & M model law school will average about $3,357 per full-time student.[22] The cost per law student is directly related to the 250 member student body size; at an enrollment of 350 students, and making provision for appropriate increases in staff, cost per full-time law student would decrease to about $2,900.

For mainland law school comparisons, in 1968, average "marginal" law school costs at the University of California at Berkeley and UCLA met out of public funds were estimated at roughly $3,000 per student, "fixed costs" (for administration, minimum library, and other services which must exist regardless of size) an additional $200 to $300 per year, or at about the same as for Hawaii. Manning hazards the "reasonable estimate...that the actual cost of a year of legal education for a student at a top ranking law school today [1969] is more than $4,000" (Manning, 1969:1127).

Before concluding this cost analysis of the W & M model, it needs be reiterated that not included in the projections are the expenses of non-academic credit activities such as continuing education for the members of the Bar. While part of the cost of any undertaking of this or comparable nature might well be absorbed by an on-going W & M type law school, as, for example, those expenses related to planning a special activity, or thereafter maintaining coordination, the bulk of the cost would have to be borne separately. Later, this distinction becomes of significance when other legal education models are considered as alternatives to the W & M type law school.

2. Law School Benefits

Do the benefits anticipated warrant establishing a law school in Hawaii? More specifically, for a law school structured along the lines of the W & M model, what is the ratio of its costs to benefits? Once answered, companion inquiries can be addressed to alternative models, so as to permit comparison among a variety of proposals for providing legal education. Although this may all be easily conceptualized, there are few benefits flowing from a law school which may be expressed in dollar values and measured against costs. In fact, many are of such ephemeral nature as to defy quantification of any kind. Nevertheless, for a decision to be reached, benefits

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[22]This compares with an estimated cost of around $4,346 per student if the student body were held to 150 under the Warren and Mearns original proposal, but their costs modified to include higher salaries, etc., as appropriate.

must be weighed, and it is feasible to identify them as direct--to the law student, indirect--to the Hawaii Bar and the student body of the University of Hawaii, and more general, secondary benefits to the community.

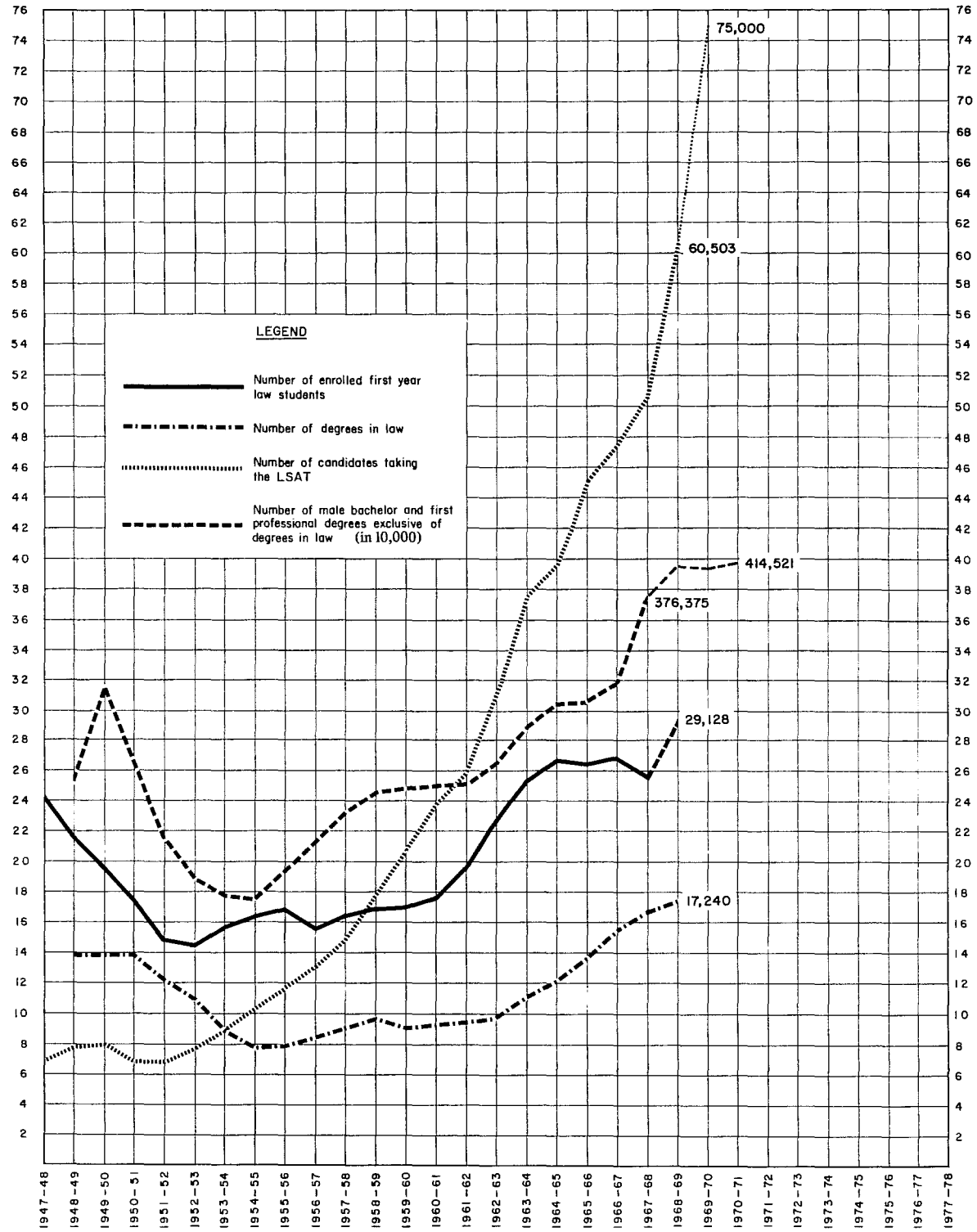
Admission to Law School. For the prospective law school student, the most immediate benefit gained through establishing a W & M type law school in Hawaii is the marked augmenting of his opportunity to obtain a legal education. In part, this results from minimizing the obstacles of expense and physical distance which prevent some qualified candidates from going to the mainland to study. And in part, this flows from offsetting the trend which has seen an ever narrowing of the chances of Hawaii students' applications being accepted by mainland schools. Indeed, if a law school is not planned for Hawaii, in the not too distant future, the State faces the prospect of only a small proportion of Island students capable of matriculating at law school being competently prepared for the professional practice of the law. To the extent a larger group of students succeeds of admittance, it will be only after they are shunted to schools of "minimally acceptable quality" which deny them a legal education appropriate to their capacities (See Malone, 1969: 3).

The size of law school student bodies historically has followed a wave pattern, with each new crest reaching an ever higher level. After a trough in the 1950's, and enrollments dropping to about 40,000 in 1955, the Nation experienced a rising demand for legal education which has seen the total enrollment in the Fall of 1970 reach 82,000 (Ruud, 1970). Differentially, this is also reflected in the number of degrees in law granted over the years. The number of candidates taking the LSAT has increased out of proportion to enrolled first-year law students, in part reflecting the institutionalization of the LSAT score as a criterion for admission (see Chart 1).

Back in 1959, it was lamented that "we lack competent scientific studies...of law school application probabilities..." (Conference on Legal Education, 1959:8). The situation has not improved. As best as can be projected, over the next few years, the tremendous pressure on law schools to accept more students may slacken, and enrollments concommitantly tend to plateau. However, discounting economic depressions, military service drafts, organic change in the pattern of legal services, et al., the long-run outlook is for

Chart 1

ENROLLMENT DATA



Source: Educational Testing Service, Princeton, N.J.

the combination of an expanding population, rise in numbers of college graduates, and general American affluence to raise law school applications to higher levels. In 1980's, when the rate of expansion of undergraduate education will have slowed, and in some years the absolute number of students may even decline (Kerr, 1970: 43), this will have a corresponding impact on slowing law school enrollments.

Professor Vaughn C. Ball of the University of Southern California Law Center, by relying on refined birth statistics, has over time obtained close approximations between estimates and observed law school data. This has permitted him to project first year class enrollments through 1974:

PROJECTED FIRST-YEAR LAW SCHOOL ENROLLMENTS[23]

	1969	1970	1971	1972	1973	1974	Error (%) Av.	Max.
U.S.	32,704	37,485	36,563	37,532	38,199	41,099	4	10
Pacific	5,304	6,137	6,039	6,250	6,412	6,951	6	13

The Office of Education of the U.S. Department of Health, Education and Welfare estimates that professional law degrees will continue to increase in numbers through 1979, the last date of their projections:

FIRST PROFESSIONAL DEGREES IN LAW

Year	Men	Women	Year	Men	Women
1959	9,599	257	1970[b]	18,550	810
1960	9,010	230	1971	19,120	850
1961	9,182	247	1972	19,520	880
1962	9,275	282	1973	20,040	940
1963	9,803	314	1974	20,380	990
1964	10,561	314	1975	20,950	1,060
1965	11,415	376	1976	21,390	1,110
1966	13,011	480	1977	21,840	1,170
1967	14,563	593	1978	22,150	1,230
1968	16,254	677	1979	22,490	1,270
1969[a]	18,180	790			

[23] Data were supplied through interviews and correspondence with Professor Vaughn C. Ball.

FIRST PROFESSIONAL DEGREES IN LAW (continued)

[a]Estimated

[b]1970 on, projected

Source: Office of Education, 1969

All of these estimates subsume either existing law schools can accommodate the additional students, or the founding of new schools to supplement present capacity. The former is very doubtful. By 1965, a number of schools had already reached maximum enrollment, the greatest number of them located east of the Alleghenies. Today, few of the accredited law schools throughout the mainland do not fit into this category. Only 16 of the 140 law schools responding to an ABA questionnaire replied that in the Fall of 1970 they could have enrolled additional qualified students. In all, they indicated having space for 350 more day and 306 evening students; this unused capacity equalled only 8/10 of one per cent of total current enrollment (Ruud, 1970). Although there undoubtedly is greater expansion capability than these statistics imply, they point up the ever shrinking opportunity, both present and prospective, for obtaining a legal education.[24]

The immediate impact of the mounting interest in securing a legal education has been to increase competition for each year's freshman class. As shown by one study of six law schools, the chances of their accepting a candidate dropped from 34 per cent to 13 per cent over 12 years, while the size of the freshman enrollment increased 28 per cent.

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[24]In the decade of the 1920's, in response to the great demand for legal education, proprietary schools sprang up, only for many to depart from the scene a few years later. As commercial enterprises cannot secure accreditation, and graduation from an approved school is requisite for practice in a majority of states, this does not offer the same means for easing the pressure on enrollment ceilings as it did a half century ago. New law schools, expansion of existing schools, and shortening of the curriculum so as to accommodate more students within the same period provide the only solutions.

APPLICATIONS AND ACCEPTANCES - SIX LAW SCHOOL, 1958-1969[25]

	1958	1960	1962	1964	1966	1968	1969
Applications	4,454	5,020	6,124	8,744	10,312	11,565	14,361
L-1	1,493	1,517	1,638	1,633	1,651	1,811	1,910
Per Cent	34	30	27	19	16	16	13

Columbia, Harvard, Maryland (day and evening), Northwestern, Stanford, Virginia.
Source: Professor Vaughn C. Ball, U.S.C.[26]

As the percentage of applicants accepted has dropped, the average LSAT[27] and GPA scores of the freshmen classes have risen. As illustration from 1961 to 1966, the average (mean) LSAT of the UCLA first-year class increased from 540 (70th percentile) to 616 (87th percentile), while the average (mean) grade point average increased from 2.84 to 3.14. Since then they have continued to rise. In 1961 a quarter of the entering class had an LSAT below 500, but by 1966 there were none. This trend of increasing exclusions and rising standards characterizes all of the University of California law schools even though during the same period they have experienced a rapid growth in size (Report of the Advisory Committee, 1968:6).

What does this mean for Hawaii residents today desiring to enroll in law school? In the absence of extraneous factors--which, as will be explained subsequently, hold the threat of "discriminating" against Island students--the bulk can yet gain admittance to some accredited law school. Unless they record unusually high academic and aptitude performances, education at any of the national prestigious schools is foreclosed. Compared with the groups which went to the mainland one or two decades ago to be trained in the law, on the average, matriculation today by the Hawaii student is possible

[25]Probably multiple applications increased as the chances of acceptance dropped, resulting in somewhat exaggerating the twelve-year comparison.

[26]Through interview and correspondence.

[27]Although the reported median LSAT scores of all persons sitting for the examinations have been slowly rising, this has not been at as fast a rate as the rise of median LSAT scores of first-year law classes.

only at less competent law schools. He may attempt to break out of this constraint by applying solely to the schools acknowledged as being more adequate, but he then risks the chance of not gaining admission to any.

The 34 students from the University of Hawaii who participated in the November 1969 LSAT examination in Hawaii had a median LSAT of 539. The records of these same students at the University showed a median GPA of 2.9 (almost B). The Law School Placement Service of Hartford, Connecticut, reported that there was at least one student with lower LSAT, GPA, or both, in the current freshmen classes of 87 out of the 94 institutions cooperating with them.[28] However, the prospects of this "median" Hawaii student gaining admission would be decidedly better at the law schools where he scored higher than the class average. Addressing attention to these indicates that in less than half of the schools (42 of 87 schools), would this "median" student have been a prime candidate for admission. To the extent that schooling costs set financial limits on his ability to apply to any particular school, the number of potential schools would have been additionally restricted. Taking $3,000 a year as marking the "median" student's maximum financial undertaking, the number of potential schools is further reduced to 32.

HAWAII "AVERAGE" SCORES COMPARED WITH ACCEPTED 1969 FRESHMEN LAW STUDENTS

Total Schools	Hawaii below both average LSAT and GPA	Hawaii below average LSAT, only	Hawaii below average GPA, only	Financial over $3,000 (in remaining schools)	Balance of schools left
In California--10	4	3	0	2	1
Additional in West--------10	1	4	0	1	4
All Others-----67	5	28	0	7	27
87	10	35	0	10	32

Source: Law School Placement Service, December, 1970.

[28]The deliberate recruitment of Blacks, Mexican-Americans, and others from areas which is now occurring on the mainland undoubtedly has contributed to the lowering of admission scores reported. See infra, p. 47, for consideration of accuracy of scoring techniques for measuring capacity of disadvantaged students.

None remaining in this group of 32 schools could in any way be considered distinguished: few of their libraries are more than minimally sized; the bulk (18) of the schools have evening programs, three wholly night schools; and of the 14 conducting only day programs, six are very small, with about 150 students or less. In addition to all this, 13 of these schools are located within the South or in Border States, where Hawaii students express reluctance to matriculate. While the "median" student could have his pick of all 32, he probably would opt for few, if any, and take his chances among those of the 20 law schools within his financial abilities (of the other 45) where his scores are below the entering class average. So much for the "median" student. For the full half of the Hawaii students whose scores fell below their group's median, the pickings would be even leaner, and of course those at the bottom would have practically no chance of acceptance. This is the realistic perspective for the generalization that "the bulk [of Island students] can yet gain admittance to some accredited law school."

Hawaii Students Disadvantaged: The foregoing is all premised upon the assumption that in each school the student from Hawaii has an equal chance of competing with all other applicants. Actually, they do not, and in effect Hawaii residents are "discriminated" against both expressly and covertly, for the most part reducing their prospects of obtaining a legal education. When the North Carolina law school increased the size of its entering class but kept constant the proportion of state residents in the student body (Phillips, 1969:79), Hawaii's students theoretically enjoyed an equal chance to share in the expansion. But as publicly supported law schools apply maximum ceilings which have the effect of reducing the proportion of out-of-state students accepted, Hawaii's increasing number of applicants have correspondingly fewer chances of acceptance. Indirectly, the same "discrimination" occurs when higher LSAT and GPA cutting scores are employed to screen non-residents than are applied to resident applicants. It is now accepted as normal that tuition rates for out-of-state students will be markedly higher, which also exerts a calculated dampening effect on non-residents' matriculation.[29]

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[29] One dean's reply: "...as the press of applicants increases, the Board of Higher Education may be forced to restrict non-resident enrollment or, perhaps more likely, increase the tuition for non-residents."

In the completed questionnaires received by the Legislative Reference Bureau from 57 publicly supported law schools, 17 acknowledged applying screening procedures which resulted in out-of-state students not enjoying the same opportunity for acceptance as residents. Most imposed percentage limitations, the maximum non-resident component permitted ranging all the way from 60 per cent to 10 per cent of the total student body. (The median for these schools was 22-1/2 per cent.)[30] The lower non-resident component of publicy supported law schools,[31] when compared with those not run under governmental auspices,[32] suggests that restrictive practices are being more generally applied than was reported.[33] Since all of Hawaii's students must go to the mainland for legal education, any form of enrollment advantage available only to residents works to their disadvantage.

In addition to the factor of state residence, the imposition of geographical or school quotas may be a detriment to Island students. Back in 1959, a student newspaper noted that "none of [the five law schools]...contacted would admit to maintaining any sort of quotas, either geographical or college-wise. However, certain patterns of consistent geographical and institutional origin develop, and most [of the five] schools tend to admit each year roughly the same percentage from each college and locale. At Harvard, Yale's 158 students is second only to Harvard College's 317, and barely ahead of Princeton's 154....Weighting of the LSAT as compared to other parts of the application varies considerably depending... [in part] upon the reputation of the school. Harvard Law's...

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[30]West Virginia does not accept any non-resident student until all qualified residents have been accommodated; the local component of its student body for 1969-70 was estimated to be around 91 per cent.

[31]Median of percentages of residents in 54 publicly supported schools: 75 per cent.

[32]Median of percentages of residents in 30 privately conducted law schools: 62 1/2 per cent.

[33]The higher out-of-state tuition of publicly supported schools may encourage some students to declare a change of residence, which will contribute to higher residency ratios in these schools.

[secretary of admissions] asserts that the LSAT is regarded as less important in the application of a graduate of Harvard, Yale, or Princeton than in most cases" ("Law School", 1959). Undoubtedly, these same ratios do not hold a decade later, but the article significantly highlights the point that admission practices followed may favor some schools, and correspondingly, regions, over others.

Eighty-one of the 95 law schools responding to the Legislative Reference Bureau survey stated that in evaluating applicants, consideration was given to the quality of the institution from which they were graduated. The University of Hawaii was ranked by 43 of the respondents: in top quartile, 14; second quartile, 24; third quartile, 5; lowest quartile, 0. Except for those mainland schools which placed the University in the top quartile, the result of this evaluation system is to apply a covert form of "discrimination" against Island-educated students seeking admission to law school. Their GPA scores will be discounted when measured against a competing applicant whose undergraduate institution is ranked academically higher.

As offsets against this covert "discrimination", several private law schools responded in the Legislative Reference Bureau's questionnaire that they desire to enlarge their Hawaii student component. With contemplated expansions, several other law schools look forward to being able to enroll more non-residents. Also, there is the possibility that some students from Hawaii may now be enjoying the benefit of classification as members of minorities whose applications are receiving preferred treatment. A number of law schools on the mainland are enrolling Blacks and Spanish-Americans with LSAT and GPA scores below school minimums when from other criteria it appears they have ability to undertake legal education successfully. Although when visited, several mainland agencies generally concerned with law school recruiting responded in the negative to specific inquiry on whether non-Caucasians from Hawaii were so classified as minority students, as did a number of deans when personally contacted, at least one public California law school has enrolled Island students under this rubric. Such minority treatment is believed to be exceptional. Nevertheless, to the extent Islanders receive any form of preferential treatment, their admission problems are correspondingly eased. Viewing this from a longer perspective, it seems unlikely that Hawaii may safely make its plans in reliance upon any such favorable differential treatment offsetting the weight of the disadvantages suffered by Island students.

Finally, in considering mainland law school admissions, mention ought be made of the fact that students from Hawaii express a preference for enrolling in Western law schools. Of the 98 admittees to the Hawaii Bar during 1968-70 who had received education in Hawaii, 45 per cent were graduated from law schools in the three West Coast states. Of the 20 law schools named by those seniors and juniors in the University of Hawaii survey who indicated they had already made a choice of institutions, six were in California and accounted for 31 of the 53 preferences. Given as reasons for selecting an institution were: reputation and quality - 27, school in specific area desired - 12, geographic proximity to Hawaii - 11, and all others - 29. Professor Vaughn C. Ball's projections to 1974 for the Pacific region show a faster overall rise in demand for law school enrollment than for the Nation as a whole. This indicates that Hawaii's students will encounter increased competition for acceptance at West Coast schools, and that progressively they will have to direct their applications ever more widely in order to obtain admittance to any school. While the majority of mainland students apparently attend law school either in the state of residence, or in a contiguous state,[34] Hawaii's students will of necessity have to scatter across the mainland.

As the pressure becomes ever greater for admittance to law school and as mainland school capacity does not correspondingly expand, the proportion of students accepted must decrease. Due to the overt and covert "discrimination" previously discussed, on balance this will redound to the disadvantage of the Hawaii applicant, so that on the average the Islands will experience a disproportionately higher rate of rejections. To the extent that acceptances are received, on the average they will progressively be for a quality of education which will compare less favorably with that which would be provided by a school in Hawaii. Having a law school in Hawaii can assure a legal education for qualified Island students, that is, assure "discrimination" in their favor. For Hawaii students

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[34] Other than seven states (including Alaska and Hawaii), not less than 60 per cent of the law students hailing from a particular state were in 1963 either attending law school in their own home state or in a contiguous state sharing a common land boundary. On the average (median) about three-fourths of the law students were going to school in their state of residence or an adjoining state (Extrapolated from Student Wave Survey, 1968).

desirous of a legal education, it is of demonstrable benefit that a well designed law school be founded in the Aloha State.

Low-Income Students: Support for a Hawaii-based law school is partially based upon the opportunity for professional education in the law which it will offer to students from low income backgrounds, who otherwise could not afford the cost of attending a mainland law school. This segment of the community will thus be afforded an important avenue of advancement, and indirectly, the whole Island Community will benefit (see infra, p. 45). In part, this is a refurbishing of the old "John Marshall" or "Abraham Lincoln" argument over admission to the Bar--a person should not be disqualified because he cannot afford a law school education (see Arno, 1960:849). Rephrased, it is that economics ought not serve as a disqualification, and at least to that extent an Island-based law school is warranted in order to facilitate the education of those students from Hawaii whose parents cannot finance their attending a mainland institution. The elimination of transportation expenses and out-of-state tuition differentials, the reduction of living costs, and the opportunity for earning limited supplemental income would cumulatively make law school enrollment possible. This is but part of the broader American principle of affording equal opportunity to all, irrespective of their station in life.

The question may be raised as to how real a deterrent the high cost of a legal education actually interposes. For one thing, many law schools administer extensive loan and grant programs. Seventy-five law schools responding to the Legislative Reference Bureau's questionnaire alone reported providing over $4,000,000 in non-repayable financial assistance to their students as grants, work-study payments, tuition waivers, and in other aids. Repayable loans through these same schools totalled an even larger sum. Few of these schools indicated any differential treatment was afforded out-of-state students, except in the relatively few cases of public funds specifically appropriated for residents. Presented with these facts, there are grounds for questioning the need to fund an Island law school in order to accommodate the State's economically disadvantaged.

The answer appears to lie at a point somewhere between the claim of necessity for an Island-based school and the rejoinder that any qualified and sufficiently motivated Islander can obtain a legal education. On the average, the lower the LSAT and GPA scores of the student, the less prestigious and more poorly endowed the school which will accept him, and the smaller the funds it has at

its disposal which it can make available in some form of subvention. The extremely talented Islander may be able to obtain sufficient assistance to permit him to complete the full three years of law school; the others will undoubtedly have to engage in near full-time work in order to supplement whatever grants or loan money they can raise, and run the risk of performing poorly.[35] In the first year of law school, when students should devote all of their time to their studies, they are particularly discouraged from engaging in outside employment.[36]

Although law students are eligible for loans under nationally sponsored programs, direct loans from federal funds are limited, and as students from low-income families constitute questionable risks, they experience difficulty in obtaining money via insured loans channeled through commercial lending institutions. Some may have exhausted their ability to borrow while undergraduates. In addition, lacking reserves, many will be reluctant to assume the heavy obligations requisite for financing law school attendance which require the commencement of repayment shortly after the termination of study.[37] The net effect of all this is that the very high

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[35]"Acceptance of admission to the school carries a commitment on the part of the applicant that the necessary time will be available for law study....Very few persons can reduce the academic work week and still succeed. This means that it is difficult to carry part-time employment. If there is no other solution to the financial problem, then it is strongly recommended that employment not exceed 10 or, at the most, 15 hours per week, and that the student's faculty advisor be informed. Students carrying part-time employment in excess of ten hours per week must reduce their academic program proportionately..." ("The Study of Law..." 1969:17).

[36]Of the 86 day law schools responding to this item on the Legislative Reference Bureau's questionnaire, 12 prohibited outside employment and 74 discouraged it. None freely permitted outside employment, in contrast to the 19 which did for second year students, and 32 for seniors.

[37]A forthcoming report of the University of Hawaii's Survey Research Office, based upon a sample of students from all campuses, will show students from families with annual incomes under $7,500 less willing to apply for loans than those from higher income families.

performer and the greatly motivated, despite their limited economic resources, will probably be able to matriculate. The balance will remain in Hawaii, the lack of a law school in the Islands close at hand effectively foreclosing their receiving a legal education. (Here also see p. 74, infra.)

Monetary Benefits: The outputs of a law school do not carry price tags. In the attempt to measure them in economic terms, a monetary value may be imputed to the professional education of its graduates. The other monetary benefits which may be attributed to law schools are chiefly tied to the income of their students as lawyers.

Besides increasing their chances of enrolling in a law school of better quality, establishing a law school in Hawaii will directly benefit its graduates by augmenting their life incomes. Governmental statistics demonstrate that additional education is correlated with higher personal incomes (Bureau of the Census, 1970), but it ought be noted that this "value-added" concept is not without difficulties (see Miller, 1970:107). It can be argued that the decision to undertake law study reflects differences in motivation, ability, and character that would affect earning power whether or not the graduate work was undertaken. However, unless one posits that each profession's average income is wholly determined by the abilities, motivations, and character of its practitioners (so, for example, that aeronautical engineers on the average are less able, etc., than lawyers, since their incomes are lower, and, correspondingly, medical doctors are more competent), additional education must be accepted as having an economic worth separate from the personal characteristics of the student. Consequently, while recognizing personal capacities as a factor, no attempt will be here made to theorize on an appropriate discount rate.[38] Rather, it will be assumed that on the average all university graduates are equally motivated, etc., so that the income supplement attributable to law school education can be taken as evidenced by such simple statistics as comparisons of the salaries of attorneys with chemists and engineers (Bureau of Labor Statistics, 1970:7, 78, 79), or doctors and dentists (Katzman, 1968a:980).

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[38] A California study refers to this differential in earnings between college and high school graduates which is not attributable to schooling and approximates it at about 25 per cent (Hansen and Weisbrod, 1968:18, 19).

"Just as undergraduate education provides a monetary payoff, so does graduate education. But estimating the monetary return from graduate education is a more complex and difficult undertaking--complex because unresolved conceptual issues arise in the consideration of graduate education, and difficult because of the absence of a firm data base" (Hansen and Weisbrod, 1969:33). Relying on statistics a decade old, it has been estimated that the lifetime value of a legal education to the lawyer ranges from $22,500 to $338,300, the state of the economy affecting the actual return. "We consider the most likely state to be a 2 per cent growth rate and a 6 per cent interest rate, implying a net return of $107,700" (Katzman, 1968:980; also see Katzman, 1967:21). From this would be subtracted the costs of attending law school.[39] The net return to the law student represents the monetary benefit he receives over the balance of his life. Obviously, this is many times the per-student cost to the State of providing him with a legal education as well as the student's total personal expenses.[40]

Indirectly, the benefit received by the lawyer in the form of increased income redounds to the monetary advantage of the state. It may be accepted that where schooling increases future earning of students, it constitutes an investment in human capital (Schultz, 1963:10). The additional taxes received from the lawyer can be regarded as payments toward recoupment of the principal and return on investment. Thus, the true cost to the State of a student's legal education would be net of increased taxes directly attributable to the practice of the law.

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[39]Full costs to the student in attending law school include tuition; expenses incident to education, such as books, supplies, transportation, etc.; any expense for board and room, clothing, and other living expenses over and above what would have been required had he not attended law college; and the loss of earnings (foregone income) because of the decision not to enter the labor force until later (Bowen, 1968:5). It must be assumed that the law student does not enjoy his law education more than the activity he gave up--if he does, then his educational costs reflect consumption as well as investment, and should be reduced accordingly.

[40]In economic terms, whether a student embarks upon a legal education depends upon his determining that the discounted future differential income is at least equal to or greater than the current cost of a legal education. No attempt is here made to so express future income in current dollars to permit more exact cost-benefit comparisons.

Should the State of Hawaii expend around $10,000 in the education of each student attending a law school built along the Warren and Mearns model, it is possible that over time it may receive back in revenues the full amount of its original investment; extra tax receipts analagous to interest would be doubtful. Any estimate of this nature is very questionable, in part due to the certainty that some Island-educated lawyers will leave Hawaii, and the value-added element of their incomes will then benefit another jurisdiction. As Hawaii has long been the recipient of this form of subvention, due to mainland jursidictions for many years partially subsidizing the legal education of Island students--directly in their public institutions, and through tax and other concessions enjoyed by privately-supported educational institutions--perhaps this ought best be treated as a form of comity repayment. But besides this, to the extent that the grossest of estimates[41] can be made of the increased taxes to be derived from the greater earning power of those lawyers who do remian in the Islands, on the average such revenues may approximate as much as $10,000.

A variety of other monetary benefits may be attributed to legal education, but all of an indirect and highly attenuated nature. Legal secretaries and other office employees of practicing lawyers owe their salaries to their principals' engagement in the practice of law. A 1967 national survey of lawyers reported that law firms were expending 22.3 per cent of their receipts on payroll (U.S. Department of Commerce, 1969), and an earlier Oregon survey estimated that about one-eighth[42] of the gross income of attorneys of that

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[41] Obviously the amount of tax paid to Hawaii will vary, depending upon the bracket in which the lawyer's income falls, the number of his exemptions, etc. Assuming $100,000 lifetime added income evenly distributed over 40 years, representing an annual $2,500 supplementation to the income of a "typical Hawaii family" (see Tax Foundation, 1970), and continuation of taxes and tax rates, the resultant extra State personal income and various excise tax yields would approximate $10,000. Of course, if Federal taxes are also included, the total undiscounted tax yields would far exceed the governmental expenditures for providing the legal education.

[42] Extrapolated by applying 33.6 per cent of "total expenses" for "secretaries" against an expense ratio of 38.4 per cent of total gross income of law firms.

state was being applied for payment of secretaries, alone (Baerncopf and Dole, 1963:61, 64). It also must be assumed that salaried attorneys of private employers--working as an associate or counsel--furnish their employers with a service worth in excess of salaries and expenses. And beyond this, unquestionably, there are many transactions in which the services of the lawyer contribute an economic value over and above their cost. However, all of this is of such conjectural nature as to warrant only passing reference. Principally it is the lawyer, himself, who enjoys the direct monetary benefits derived from a legal education. The remainder, which by nature do not lend themselves to measurement in monetary terms, characteristically are found spread widely throughout the community.

Secondary, Non-Monetary Benefits: In addition to direct benefits, measurable monetarily, a range of social benefits flows from establishing a law school. Their value must be stated in non-economic terms, although it is recognized that many have economic spin-offs, and possibly to some services, dollar values might even be assigned. For example, if the State were to contemplate contracting for a periodic critique and report on the Hawaii legal system, the consideration it would be willing to pay may be taken as the monetary equivalent of the comparable contribution which may be expected of a law journal when instituted by the law school. Similarly, since law professors from the mainland might be brought to the Islands as consultants to perform designated community services which staff of the law school will furnish, the probable fees of the consultants could be treated as the monetary value of such non-teaching community contribution. However, all such efforts at affixing price tags would be to a great degree arbitrary, and to that extent artificial. Instead, it appears sufficient to identify the various ways in which the community will gain through the presence of a law school, and to allow wholly subjective considerations to appraise their worth.

As an institution of higher education, the law school and its faculty promise to have a material impact on the University of Hawaii. The presence of a law faculty will add a new element in faculty interaction, and encourage greater cross-disciplinary activity. The development of the University promises to be quickened and the intellectual life of its students enriched by the presence of a law school. As stated by the former dean of the Chicago Law School, "One can have a great university without a law school, because it has been done, but it must be much more difficult." (Levi, 1965: 245).

Even during the course of receiving a legal education, a number of public value-added outputs will be derived. Legal aid and other forms of student activity provide public services which help meet a wide gamut of community need. Clinical work, which is rapidly becoming the hallmark of the modern law school, will see the law student filling an unofficial ombudsman role in such places as the local courts, police station, prosecutor's office, and jails and prison. "Experience already indicates that the physical presence of law students and their teachers in such locations has a salutary and elevating effect on practitioners, judges, and various public officials. It has also strengthened confidence in justice on the part of those who have not had the legal advice and assistance required." (Pincus, 1970: 28).

For the members of the Hawaii Bar, a direct benefit will flow from the leadership and supportive activities of the law school in encouraging the continuing education of the State's practicing attorneys. The rapid developments occurring in the law, and the need to keep informed of all of their implications, mandates the active lawyer's sustained interest in further legal education. Judges, too, require assistance in remaining informed of all developments pertinent to judicial administration. While the Bar would be expected to bear the major cost of any program of continuing legal education, the law school would furnish the administrative bulwarking necessary to institute such program, and once initiated, to assure its continuity in a manner responsive to the needs of both bench and bar.

The presence of a body of legal scholars concerned with improvement of the law and the administration of legal institutions will be felt by the Island Community in diverse ways. Through their general research findings, the furnishing of consultative advice in response to both lawyer and citizen request, and active advocacy in those subject matter areas where their expertise qualifies them to assume such leadership role, they will quickly become integral to the whole of Island life. Their practical experience and technical skills will contribute to the devising of effective strategies through legislation and adversary action designed to achieve solutions of the difficulties faced by the State. "In short, a university law school would have a reservoir of talent which could be brought to bear on the pressing social and economic problems of the day." (Warren and Mearns, Op. cit., 18).

Besides addressing themselves to Island-oriented matters, Hawaii's geographical setting and population offer opportunity for the law faculty to engage in research which holds promise of making a fundamental contribution to knowledge of legal institutions and practices. Situated between East and West, its peoples with roots in both, the Islands provide an unusually favorable site for undertaking studies of Asian legal systems and expanding the existent body of comparative American-Asian law. Hawaii's unique development and location also encourage research into subjects which have international interest, such as ocean rights and land usage. The general benefits which would flow from this type of law school activity, while enjoyed by Hawaii, would extend far beyond the confines of the Islands.

Hawaii Bar Composition: Distinct from all matters previously referred to, a Hawaii-based school would have another form of beneficial impact. After World War II, the G.I. Bill of Rights materially contributed to Hawaii's social revolution, aiding many from modest backgrounds to obtain a legal education on the mainland and return to the Islands to assume posts of public leadership. Today, lacking funding of comparable magnitude, or a substitute in the form of a locally available law school, access to the profession of law is limited, and upward mobility is thereby discouraged. And as one of the potential results flowing therefrom, the Hawaii Bar faces the prospect of becoming progressively unrepresentative of the Island Community.

The statistics of lawyers in Hawaii leave much to be desired by way of their coverage. Prefaced with this caveat, it appears that measured against the educational achievements of the Bar in other states, the Hawaii Bar is extremely well qualified. The same generalization applies when the lawyers in Honolulu are compared with wheir colleagues in cities of approximately the same size. In addition, to the extent that graduation from a prestigious law school signifies superior preparation for the practice of law, the Hawaii Bar has long enjoyed the distinction of numbering a sizeable alumni from these schools among its membership. In the three-year period 1968-70, of the 218 who were admitted to the Hawaii Bar a full 30 per cent had matriculated at eight of these schools;[43] the balance had attended some 51 schools spread across most of the United States.

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[43]Boalt, Chicago, Columbia, Harvard, Michigan, Stanford, U.C.L.A. and Yale.

EDUCATIONAL ACHIEVEMENT OF LAWYERS, 1966

	Attended College	Received Degree	Attended High Sch.	Received Diploma	% No Data
Hawaii	94.3	83.9	97.6	94.8	1.9
Nat'l Average	88.7	67.1	95.5	89.6	3.0
States Higher than Hawaii	1 St.	1 St.	2 Sts. & Wash. D.C.	1 St. & Wash. D.C.	most Sts.

Source: Weil, 1968.

The establishing of a law school at the University built upon the W & M model would not necessarily effect any change in emphasis upon completion of prior preparatory education. Nor does it seem probable that so long as Island students can continue obtaining the necessary funding, that the presence of such a law school would counter-influence roughly the same number of exceptionally qualified Hawaii residents from enrolling in the Nation's prestige schools and later swelling the ranks of the Hawaii Bar. This latter generalization is premised upon the small fraction of Hawaii educated students who matriculated at these schools; of the 67 admittees to the Bar in this select category over the three-year period, only 18 had originally come from the Islands.[44] Unless it be asserted that the standard of legal instruction at a Hawaii-based school will be inferior to that offered at the average of the some 33 schools which the remainder of the Hawaii-educated students (80) attended, the quality of the Hawaii Bar as measured by educational achievement would remain unaffected.

Rather, the change which potentially would be introduced into the character of the Hawaii Bar by an Island-based law school would be to modify its composition so as to result in its embodying a truer cross-section of the total Island community, Presently, those students unable to afford a mainland legal education most likely come from Island families of lower socio-economic status; those students who enter law school will tend to have more financially advantaged relatives. These surmises find factual support in the statistics of the last three years' Bar examinations. Of the 98

[44]Of the Hawaii-educated Bar admittees during the period 1967-70, 18 per cent (18 of 98) attended the eight prestigious law schools; of the balance of 120 admittees, 41 per cent (49) had attended such schools.

Hawaii-educated students who passed the Bar, all but three attended high school in Hawaii. About two-thirds of these high schools were private;[45] 41 of these new members of the Bar are alumni of either Iolani or Punahou High Schools. The tuition rates of the latter two schools are sufficiently high that attendance normally implies the students' parents have incomes identifying them as being of at least middle class status. Even after allowing for high school scholarships, these statistics suggest that recruitment of Island students to the Hawaii Bar does indeed tend to be from the middle and upper socio-economic classes.

The data on high school attendance assume added significance in the light of current questioning of the LSAT scores. Examinations such as the LSAT are being recognized as inadequate for measuring the potential of students whose educational experience, in and out of school, has differed significantly from that of the great majority of students for whom the tests are prepared. To the extent that economic disadvantage has contributed to restricting the cumulative educational experience of a student over the long period of his growth and development, this will be reflected in lower test scores. Applied to Hawaii, this may have the effect of reducing the possibility of some students coming from humble surroundings scoring sufficiently highly to be accepted by mainland law schools. Also, of course, low scores may discourage even more from applying for admission, since they do not wish to attend marginal schools. The personal interviews and more insightful evaluation of references possible with a law school located in Hawaii would provide an added dimension to the screening of applicants and help overcome any bias introduced by currently used systems of scoring.

It is acknowledged by all that the members of the legal profession in Hawaii play an important role in shaping public policy and furnishing the leadership for various forms of community endeavor. Relatively few important governmental and business decisions are made without consultation of a lawyer. Providing legal education in Hawaii as answer to the "poor man's law school argument" promises to widen the recruitment base of the Hawaii Bar, and thus contribute to its further democratization. In turn this will exert an influence over the composition of civic leadership, and the nature of public policy, which under normal terms of reference is considered to be to the ultimate betterment of the community.

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[45]Three students who attended University High School are classified under private schools, since a tuition fee was charged.

Chapter II

LEGAL SERVICES AND NEED FOR LAWYERS

Defining "lawyer" as anyone admitted to practice in one or more of the states, there are approximately 300,000 in the Nation. Although so identified as lawyers, a significant number of law graduates do not engage in the practice of the law, either as employees or as private practitioners. The nature of opportunities open to them and the quality of their education materially influence whether law school graduates initially embark upon a law career, or thereafter continue in the legal profession. For some schools, graduates' non-involvement may run as high as 50 per cent. "Among all products of post-baccalaureate professional schools, law school graduates have the lowest rate of subsequent professional practice (they are rivaled only by graduates of schools of theology)" (Yegge, 1969: 11).

To the extent they are engaged in private practice of law either as solo practitioners or partnerships (including corporations), the most recent survey (of 1966) listed 143,000 law firms across the Nation, each averaging $45,000 annually in receipts (Bureau of the Census, 1970: 155). The larger the law firm, the greater the individual lawyer's income. The median income for attorneys engaged in private practice runs higher than that of lawyers engaged as house counsel, in government, or other salaried occupation (Legal Economic, 1969: 21), but the number of active lawyers engaged in private practice has been declining in proportion to all lawyers, so that relatively, the number of salaried persons with law degrees has been increasing.

Although they represent only a little over one-tenth of one per cent of the population, lawyers constitute well over half of the Congressmen, a large proportion of the state legislators, virtually all of the judges, countless public executive officials (including the President, just as a majority of his predecessors), and a substantial percentage of business executives (see Eulau and Sprague, 1964; Bromall, 1968). "The remarkable involvement of lawyers in virtually every aspect of American society has gone far toward making ...tenable" the "proud boast of the profession that lawyers are a race of generalists, that there are few problems either of law or society that a competent lawyer cannot grasp with small investment of effort and attention, and that the analytical skills of the lawyer can confidently be relied on to resolve complexities into manageable segments" (Allen, 1968: 596). This extraordinary versatility of the lawyer opens opportunity for economic employment far broader than professionally technical endeavor (see Carlin, 1962; Johnstone and Hobson, 1967).

Despite the ubiquitousness of the lawyer, much of his work is not specific to him, but performed with others:

> In common with bankers, realtors, insurance consultants, securities counselors, and others, the lawyer ventures investment advice and invests the assets of clients. In common with physicians, ministers and social workers, the lawyer gives personal and family advice. In common with accountants, bankers, market analysts, economists and technical persons of all sorts, the lawyer gives business and corporate advice, non-legal in nature. In common with others, the lawyer functions in various ways and situations as a "peacemaker".... (Nahstoll, 1968: 128)

Specialized advisory services are now challenging his competence as a generalist, and para-legals[46] are progressively making inroads into what the lawyer once considered as exclusively his field of endeavor. Examples of such para-legals are trust officers, realtors, tax consultants, insurance claims agents and adjusters, collection agencies, title searchers, probation officers, and welfare workers. In short, other than for representation before the courts,[47] the lawyer has no effective monopoly over the services he dispenses. Treaties may draw lines defining the unauthorized practice of the law, beyond which the para-legals may not trespass, but it is obvious that the areas of legal services over which the lawyers claim sole jurisdiction have been shrinking.

"Anyone who attempts to contemplate the present and the future of the legal profession in the United States must be struck with the fact that so little is systematically or confidently known about the profession" (Schwartz, 1965: 298). There is no question but that recent graduates of many law schools have monetarily benefited from the keen competition for their services among law firms, banks, and

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[46] "Para-legal" is sometimes used to designate one who is not a lawyer, nor under direct supervision of a lawyer, but who needs some legal knowledge to perform his work. In contrast, the term "sub-legal" is then used to designate a person who works under the supervision of a lawyer, as an experienced legal secretary (see Yegge, 1969: 4). No such distinction is drawn in this report and "para-legal" includes "para-professional", "sub-legal", etc.

[47] And even in appearances before adjudicatory bodies, the lawyer has no complete monopoly, as witness the persons practicing before various specialized administrative courts.

financial corporations, but this constitutes no guaranty of the continuance of such seller's market. The Summer 1970 Occupational Outlook estimates 14,500 average annual openings for lawyers to 1980 (Bureau of Labor Statistics, 1970a: 12). The most recent employment outlook for lawyers published by the Federal Government counsels:

> ...Graduates from widely recognized law schools and those who rank high in their classes will have very good employment prospects through the 1970's. They are expected to have good opportunities for obtaining salaried positions with well-known law firms, on the legal staffs of corporations and government agencies, and as law clerks to judges. Graduates of the less well-known schools and those who graduate with lower scholastic ratings may experience some difficulty in finding salaried positions as lawyers. However, numerous opportunities will be available for law school graduates to enter a variety of other types of salaried positions requiring a knowledge of law....
>
> Although the majority of employment opportunities for new lawyers will arise from the need to replace those who retire, die, or otherwise leave the field, the total number of lawyers is expected to grow moderately over the long run. However, continuing a recent trend, the number of lawyers in independent practice may remain stable or decline somewhat. Most of the growth will result from the continuing expansion of business activity and population. In addition, the increased use of legal services by low- and middle-income groups will add to the long-term growth in demand for lawyers. For example, expansion of legal services for low-income groups has come about through the Community Action Programs authorized under the Economic Opportunity Act of 1964. (Bureau of Labor Statistics, 1970-71: 2, 3)

The previous consideration in this report on the feasibility of establishing a law school in Hawaii has been premised upon the assumption that its students, when graduated, will be gainfully employed, that is, there is and will continue to be a need for lawyers and a demand for the legal services which they provide. It will be noted that this Federal projection of lawyer demand is not sufficient to encompass all those whom it is anticipated will be graduated from the nation's law schools during the decade of the 1970's. However, a portion of those who succeed in completing their law training will not sit for their Bar examinations, nor will all those who are admitted to the Bar enter the practice of the law either as salaried employees or as independent practitioners. The incomplete statistics now available on the legal profession do not provide any accurate estimate on the dimensions of this leakage, but it appears very likely that during the next decade those new graduates who seek but cannot obtain placement as lawyers will find compatible employment utilizing the skills imparted by their legal training. This, of course, is based upon an anticipated increase in legal services for low- and middle-income people, without any offsetting diminution in the

scope of services now provided--both of which conditions require elaboration.

There is undoubtedly need for legal services by the poor in both civil and criminal matters (see Yegge, 1969: 23ff; Carlin and Howard, 1965: 381). For the middle class it would appear "the belief that there is a vast unfilled need for legal services...is nothing more than an article of faith. It may well be true, but no existing study proves it" (Stolz, 1968: 1, 2). The empirical data necessary for substantiating an unmet demand from the middle class is yet lacking; the research which to date has hypothesized need has been mainly conceptual (see Christensen, 1970: 24, 25). Assuming agreement on who constitutes the "poor"--and there are grave limitations on a strictly economic definition--there is evidence that "lawyers as society's caretakers may be the important liaison with the poor" (Levine and Preston, 1970: 91). In extending the Economic Opportunity Act of 1964 by Public Law 91-177, a committee of Congress concluded that a total of 1,400 field lawyers funded by the Office of Economic Opportunity had not come close to meeting the total legal needs of the poor, and that for the fiscal years 1970 and 1971 an additional 600 lawyers could be put in the field and 1,500 lawyers added overall (U.S. Senate Committee Report, 1969: 2648). This is modest against the appraisal "that the need of the poor for civil legal assistance surpasses the capacity of all the lawyers in the United States combined to render such assistance" (Silver, 1969: 217). In the area of legal services for the criminal poor, as a result of the opinions of the Supreme Court "which has come to rely on the provision of legal counsel as the hinge between the individual and the implementation of constitutional rights...the Arlie House Conference on Legal Manpower Needs of Criminal Law and the President's Crime Commission estimated that between 8,300 and 12,500 full-time or equivalent lawyers will be needed annually to provide adequate representation for adult defendants in all criminal cases except traffic offenses" (Cohen, 1969: 438).

Granted these needs, their very awesome dimensions suggest that both the relative scarcity of lawyers and their high cost will encourage the development of alternative forms of legal service which may help to offset the necessity for a corresponding increase in the supply of lawyers. For one thing, as a result of the Button,[48]

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[48] National Association for the Advancement of Colored People v. Button (1962), 371 U.S. 415.

Brotherhood of Railroad Trainmen,[49] and the United Mine Workers[50] cases, group legal services most likely are in the offing. They constitute a means for satisfying the demand of middle-income people for legal care without causing the same expansion in the employment of lawyers as would otherwise occur. (Here see review of "intermediary arrangements" in Christensen, 1970: 225ff; also Cheatham, 1965: 438.) Another major change which can be anticipated is the rapid growth of para-legal services, so that particularly for the impoverished they will be employed in lieu of lawyers in numerous matters such as handling uncontested divorces, negotiations to prevent garnishments, aiding clients in public assistance and unemployment compensation, and providing death counseling.

It would also appear that the spread of the para-legal will not stop with aid to the poor. Not so long ago, a young lawyer hired after graduation from law school would start at a salary far less than the average trained secretary. Today he may be paid 150 to 200 per cent of the salary of experienced and competent non-lawyer employees. In earlier years, economics favored use of younger lawyers for routine tasks; today the reverse salaries make more widespread and effective use of non-lawyer personnel absolutely necessary. The growth of services provided by law firms will not be accompanied by a proportionate increase in the number of lawyers they employ as associates, or who join the firms as partners.

Finally, the grave indictment of automobile "fault liability" currently being voiced (see Insurance Department, 1970), and the strong probability that in the not too distant future it will be replaced by a "no-fault" insurance system, forecasts a material reduction in demand for lawyers' services. Faced with a major diminution of claims cases, para-legal workers performing all legal servicing of a routine nature, and various forms of prepaid plans "packaging" legal service needs, the next decade may not see as large an increase in the demand for the professional services of lawyers as the Nation's expanding population and greater complexity would appear to presage.

Need for Lawyers in Hawaii: Assuming around 75 law students graduate each year in Hawaii from a Warren and Mearns model law school,

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[49] Brotherhood of Railroad Trainmen v. Virginia State Bar (1964), 377 U.S. 1.

[50] United Mine Workers of America v. Illinois State Bar (1967), 389 U.S. 217.

can they be absorbed in the Hawaiian economy?[51] To phrase the question in this dimension is but to provide the answer. If they all plan to engage in the practice of the law as solo attorneys, members of partnerships or as salaried employees, at some future time, they, together with others coming into the Islands, would probably saturate the market for professional legal services in Hawaii. The siting of a law school in the State will not dissuade some Hawaii residents from traveling to the mainland for their legal education, and then returning home, nor non-Islanders from moving West, e.g., graduates from prestige schools being contracted for work in Hawaii. Cumulatively, if they all plan to practice law, they would represent a larger number of lawyers than the Islands could eventually accommodate.

This, however, does not constitute a fatal indictment of a proposed law school. Initially, as to be discussed, the size of Hawaii's Bar appears to permit of expansion without risk of over supply. Parenthetically it ought be noted that all states have some lawyers who are less than fully employed, just as in this era of acknowledged medical doctor shortage, there are doctors whose income measures their underemployment--professional practice depends on more than generalized demand, so that the lawyer cannot be treated as fungible and the marginal practitioner as marking the juxtaposition of supply and demand. In addition to present need of lawyers in Hawaii, estimates of growth in Hawaii foresee continued economic development, which concomitantly ought include demand for legal services beyond replacing depletion in present ranks. And even more obvious, the largest market for legal skills lies on the mainland United States, so that like graduates from practically all advanced education programs taught at the University of Hawaii, some law students can be expected to seek employment in other states. Later, when considering law school curriculum, this factor of mobility becomes important in underlining the necessity of Hawaii's law program being one of recognized quality and its content designed so as not to prepare graduates solely for local practice.

Comparison with the states on the mainland reveals Hawaii has a small number of lawyers and a very low proportion of lawyers to population. As against the national average of one lawyer for

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[51] Estimates of future lawyer populations are perilous at best. See "non-conservative" estimate of 1,200 lawyers in Hawaii in 1985 in Student Wave, 1969:19.

every 621 people in 1966, Hawaii's 1 to 1,083 was the fourth lowest ratio in the Nation. Only South Carolina (1,235), North Carolina (1,168), and Alabama (1,157) proportionately had the services of fewer resident lawyers. In terms of absolute numbers, Hawaii ranked 45th among the states, followed by Delaware, Nevada, Vermont, Wyoming, and Alaska, in that order (Weil, 1968: 12, 34).[52] These statistics were compiled using Census Bureau population estimates, so the ratios are approximations.

The fact that there are relatively fewer lawyers in Hawaii does not of itself constitute demonstration of deficient numbers to service the State's needs. A possible explanation might be that the other states are experiencing surpluses. However, on the mainland, all signs run counter to this "surplus explanation". Greater and wider and earlier interviewing of law students for employment; higher starting salaries of lawyers, both absolutely and relative to other occupations; and an attraction of more and better qualified students applying to law school all testify to a heavy demand for lawyers and counter-indicate the existence of any surplus of lawyers on the mainland.

Another explanation for the Hawaii-mainland differential could be that the way of life in the Islands raises less need for legal services.[53] Again, statistical evidence does not bear this out. Katzman related the lawyer-population ratio with per capita income and government employment, finding "that 89-91 per cent of the interstate variation in the lawyer:population ratio can be explained by differences in per capita income and in government employment" (Katzman, 1968a: 172). As Hawaii's government employment rate is very high, and the State's per capita income is also above the national average, this hardly supports a contention that the Islands have need for fewer lawyers per unit of population than nearly every other state.

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[52] It should be noted that while the U.S. Census has understated the number of lawyers in other jurisdictions, as measured by the Martindale-Hubbell survey figures on which the above statements are based, the Hawaii ratio of lawyers to population as appearing in both 1960 census and survey closely coincided--.0746 and .0761 per cent, respectively (Student Wave, 1969:2, 8). It is to be assumed that for the 1970 U.S. Census, the same concordance will be observed.

[53] It is not to be denied that the idyllic vision of life in the tropics leaves little room for activities necessitating the ministrations of a lawyer.

A final attempt at explaining why Hawaii's relatively fewer lawyers does not indicate the State is suffering any shortage may be premised on the fact that some legal services generally performed elsewhere only by lawyers are here being furnished by para-legals. Impressionistic observation provides supportive evidence. Visitors to Hawaii have commented on the boundaries limiting para-legal action beyond which only a lawyer may provide services are not as confining in Hawaii as those drawn in other jurisdictions. However, this observation is double edged, for it can also reveal the lack of sufficient lawyers. It is plausible that given a specified need for legal services, the fewer the lawyers practicing the greater the scope of para-legal activity which will be encountered. In part this would be a function of economics, for if the income of the profession is relatively high, there will be less incentive to identify and proscribe the unlawful practice of the law in narrow terms. Comparative income data suggest that this, indeed, may be the case.

Recognizing that Hawaii's income statistics include an element of inflation reflecting the higher cost of living in the Islands, a comparison of the receipts of law firms in Hawaii with those of firms on the mainland supplies a rough measurement for the income of lawyers. In 1966, the average law firm in only two jurisdictions--Delaware and the District of Columbia--enjoyed higher annual receipts than in Hawaii. If the form of law practice be singled out for similar attention, for solo practitioners - 8, partnerships - 4, and for firms with payrolls, only 3 jurisdictions reported higher receipts (U.S. Department of Commerce, 1967: Table 1). These data register a larger volume of work as expressed in dollars, and imply a higher return, all tending to indicate lawyers in Hawaii are in shorter supply than in the majority of states.

One final reference to comparative figures is in order, for this set suggests that the volume of general services performed by lawyers in Hawaii is relatively smaller than even the size of the lawyer population would indicate. This conclusion flows from the unusual proportion of Hawaii's lawyers in the service of judicial, executive and legislative branches of the government. For the 1966 survey, 23.9 per cent of the lawyers in Hawaii were classified as in governmental service, as contrasted with the national average of 14.2 per cent. Only Alaska, North Dakota and South Dakota had greater fractions of their lawyers in public service. Although it was reported that Hawaii also had a high proportion of its lawyers in private practice (78.1 per cent compared with the national average of 73.5 per cent) this statistic must be discounted due to double counting. Pursuant to the methodology followed, lawyers in governmental service could also be classified as engaged in private practice, regardless

of the fact that their governmental assignments limited their availability for servicing the private sector. The high double count in Hawaii of 15.4 per cent contrasts with the national average of only 4.3 per cent.[54] Reading all of these statistics in juxtaposition, not alone in relative terms is there a smaller number of lawyers in Hawaii, with all indications pointing to a shortage, but on the average, there is an even greater shortage of legal services available for the private sector of the economy.

The expansion in the size of the Hawaii Bar as a result of the increase in the numbers recently admitted undoubtedly has helped reduce some of the disparities between the Islands and the mainland as disclosed by the 1966 comparative statistics on lawyer populations. Although on the basis of 1969-1970 data, Hawaii may be shown to have swung toward the national average, it is doubtful that the shortage of lawyers has yet been erased.

Attempts to explore empirically the effects of this lawyer supply in terms of unsatisfied needs for legal services in Hawaii met with very limited results.[55] Inquiry addressed to 34 community organizations in Honolulu financially aided in 1970 by the Aloha United Fund, and a control group of 17 comparable organizations not so assisted,[56] disclosed few not now enjoying the services of a lawyer. In most cases they were volunteered, usually by an officer.

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[54]These data extrapolated from Tables 6, 7, 15, and 16 of Weil, 1968: 18-21, 48-67.

[55]The Hawaii Bar Association is conducting its own inquiry into a law school and the need for legal services in Hawaii.

[56]In all, there were 35 and 18, respectively, but one organization was omitted from each group due to the unavailability of information.

Survey of Legal Service Needs of Honolulu Community Organizations

	AUF (34)	Non-AUF (17)	Total (51)
1. Organization now has legal services	30	12	42
--employee of organization	-- 6	--2	-- 8
--officer volunteers	--16	--6	--22
--non-officer volunteers	-- 4	--3	-- 7
--both paid and volunteer	-- 4	--1	-- 5
2. Could now utilize (additional) legal services	6	6	12
Could now use services of one or more volunteer law students	18	6	24
3. Anticipate increased need for legal services next few years	13	2	15
4. Could use para-legal personnel	18	5	23

Reasons given for not obtaining the additional legal services which could now be utilized (line 2 in Table) mainly centered around lack of funds, that additional services were not forthcoming from the community support which provides lawyers, and that staffing pattern or internal rules do not permit the engagement of counsel. Only two organizations referred specifically to unavailability of lawyers as explanation for not recruiting extra legal service. Those organizations which responded that they could use personnel with limited legal education placed heaviest emphasis on training in the legal technicalities of case work law. A broad range of positions from clerical worker to executive director was identified as potentially to be benefited if para-legal training could be offered.

Inquiry addressed to governmental and quasi-governmental agencies in Honolulu proved inconclusive in casting light on governmental need for legal services. Under the provisions of the Federal Civil Service Rules, federal attorney positions are generally excepted from the competitive service. As a result, turnover statistics would not necessarily reveal information on the demand for lawyer services. No count is available of the positions in the federal civil service in Hawaii which require some or full professional legal training, and for which the U.S. Civil Service Commission recruits. Most civilian federal agencies reported that their legal work is performed by off-Island regional legal staff, and military agencies overwhelmingly indicated the use of uniformed personnel to meet their legal needs.

Close to 100 lawyers were reported as presently employed by the Attorney General and Judiciary of the State of Hawaii, the Corporation Counsel and Prosecuting Attorney's Office of the City and County of Honolulu, and the Public Defender. The total must be stated as approximate, for several are technically hired under other civil service job descriptions. In addition, at least 22 law clerks swell their numbers. Since January 1969, there have been 20 changes in the ranks of city and county attorneys for various reasons, such as more lucrative job offers from private sources or the desire for more "humanitarian" affiliation. Difficulty has been experienced in filling these positions, in part because of the lack of applicants, which is believed to be due to comparatively low pay and unattractive facilities. In contrast, the Public Defender's Office, which does not require a three-year Hawaii residence or admittance to practice before the Hawaii courts as conditions of employment, reports receiving many applications for positions. The City and County Corporation Counsel currently has six vacancies and the Prosecuting Attorney's Office anticipates hiring six more lawyers by July, 1971. No agency wished to project long-time staffing needs.

The replies from governmental agencies which reported difficulty in recruiting, and some legal posts vacant, must be evaluated against conditions prevailing in the past. Governmental employment has been frequently looked to as the means by which the young lawyer returning to Hawaii would establish a position for himself in the community before making a more permanent professional liaison. The conclusion to be reached is that the services of lawyers who have recently been admitted to the Hawaii Bar are in greater demand, and they have been finding more attractive openings elsewhere. This but reinforces the statistical data previously considered which suggested that Hawaii, like the mainland, today may have a shortage of lawyers to fill all of its legal needs.

Chapter III

LAW SCHOOL CURRICULUM

Law school goals are variously stated to be the teaching of legal fundamentals, training of practitioners, developing of lawyer leaders, preparation for a variety of lawyer roles through multiple curricular options, improvement of law and legal administration, and expanding knowledge of law--in that order, each a succeeding level of greater complexity incorporating all of the less complicated. Reportedly, the greater the school's resources (student-faculty ratios, library, etc.), the higher the level of complexity of its goals (Report on the Study, 1968: 14). The teaching of students is relevant to all of these objectives but for some of the more complex, is tangential.

From the viewpoint of curriculum of law schools, and the pedagogical methods they employ,[57] it would appear more meaningful to rephrase the goals of the modern law school as embodying a duality. One is the providing of professional training necessary for lawyers to perform their roles in society; the other is the development of an academic program for students interested in the critical evaluation of the law and legal institutions. The former is pointed toward professional practice, with an emphasis upon teaching designed to create habits of disciplined thinking and analysis which develop a sense for the relevant. While not antithetical, the latter concentrates on identifying and implementing the kinds of research which will provide the information necessary for the reform of law and legal institutions (e.g., Barrett, 1969: 3,4).

Historical Antecedents: In general outline, this duality traces its antecedents back to the beginning of legal study in the

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[57] While conceptually curriculum may be considered apart from pedagogy, for the most part they tend to be inextricably intertwined and exert a joint impact on matters pertinent to the cost-benefit analysis of a law school. For example, with regard to costs, both the case and the lecture methods are conducive to high student-faculty ratios. Once they "come to prevail, innovations become difficult because they usually require significant decreases in the student-faculty ratio and, consequently, significant increases in faculty. Thus teaching methods come to control the content of the curriculum." (The University of Minnesota, 1967: 19, 20).

United States.[58] From early in its history, legal education has been associated with the American university, while preparation for admittance to practice law was late in being so identified. The linkage between legal education and the remainder of higher education on the one hand, and with the legal profession on the other, has undergone considerable mutation, and currently remains in process of change. Early study under the tutelage of professors of law was integrally tied to the whole body of knowledge concerning social problems. Later, during the period of Jacksonian democracy, these law faculties were converted into separate law schools which divorced law from other disciplines and focused its attention on technical subjects, a separation which in good part still persists. During these two periods, the path for admittance to the Bar was by self-training through reading and law office apprenticeship, at best supplemented by the lectures attended at a university law school or one of the proprietary law institutions then flourishing. With Langdell's introduction of the case method at Harvard a century ago, a new era opened, and so profound was its influence that in word, spirit, or both, the Langdellian approach still helps shape legal education in the United States. In this third period, attendance at law school became almost a universal prerequisite for entrance to the Bar, institutionalizing the tension between "scholarship" and "training" which continues to test the relations of the law school with the rest of the university, on the one hand, and with the legal profession, on the other.

The Langdellian method concentrated upon analysis of appellate cases, and through Socratic dialogue inductively was to "communicate to students a scientific knowledge of legal doctrines, to impart mastery of a comprehensive system of governing legal principles--the essential doctrines of the common law." (Notes- Modern Trends, 1964: 711). It misconceived the complexity of the law, so assumed relatively few essential principles which could be mastered by the law student. "Modern advocates of the case method, while still relying heavily on pedagogical methodology, have shifted the emphasis from its asserted 'scientific' goal to its more practical purpose... [of training] the student in the most basic skill of the lawyer: the finding of the law by analyzing, distinguishing, and synthesizing cases...." (Ibid., 714).

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[58] For this historical summary, reliance has been placed mainly on Notes-Modern Trends, 1964, and materials referred to therein. See also Stolz, 1970a: 55ff; Manning, 1969a; and Woodard, 1968.

The case method, itself, now has outgrown attention to just appellate decisions and encompasses the study of statutes, documentary materials, and other pertinent literature. From emphasizing the systematic and historical in aid of developing theory, the study of cases has turned its attention to the typical transaction and to functional problems. (Levi, 1952). To the modern skeptic, "almost the only common theme [of the case method today] is that it involves the teaching of students in fairly large classes by a single teacher drawing on materials supposedly read in advance of class." (Kitch, 1970: 7). The zenith of the case method has passed, and today debate waxes over "the relative merits of lecture-text, case, legislative-statutory, historical, problem, conceptual, functional, or transactional approaches in the presentation of subject matter or of skills training, professional responsibility-value orientation, clinical exposure, integration of law and the social sciences, analysis of the judicial decision-making process, use of empirical methods and data processing...." (Del Duca, 1968: 310-13).[59]

To Story, who began teaching at Harvard Law School in 1828, has been credited the directing of the concern of school-based, American legal education to generalized common law, rather than the law of a particular state. Later Langdell, in his revitalization of the law program, adapted over the classification of law found in Blackstone, institutionalizing a series of courses on contracts, property, torts, public law (constitutional and criminal) and procedure. They became the model for all law schools, and even today, these "core" subjects as introduced in Harvard appear to remain essentially the basic first-year program throughout the Nation. However, though the titles of the Langdellian courses persist, their content has changed over time. "...[T]he usual second-year courses [today] are those devised principally at Chicago, Columbia and Yale, and mainly during the [nineteen] twenties and thirties--administrative law, taxes, corporations, antitrust, labor law. And increasingly the third year is a development of the Columbia and Harvard elective system...." (Stevens, 1970: 35). Through erosion and increment of the old courses, and bold inclusion of the new, the law school curriculum has been kept current and correlated with the typical practice of the law. (Cox, 1969: 259). Nevertheless, "...an examination of the bulletins of the various

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[59] For materials treating each of these competing approaches, see over 3 pages of footnotes in the article cited accompanying the single sentence quoted.

schools indicates a consensus on certain fundamental policies which produce a pattern of instruction for the first professional degree that prevails quite generally." (Committee on Guidelines, 1967: 12).

The development of legal education over the last century in the main has left the impression of continuity, of evolutionary, incremental change. Undoubtedly this is because the battles which have raged, such as "the great furor" in the 1930's over expansion of the curriculum (Manning, 1969a: 9), have been forgotten over time. Internal and external pressure to modify the content of legal education is hardly novel. But whatever the challenges which have been raised in the past, they are dwarfed by the critical situation which law schools now face, and which holds promise of revolutionizing the law school curriculum.

Current Crisis: In the words of its chairman,

> ...the Committee [on Curriculum of the AALS] has come to believe that legal education is in a crisis and that fundamental changes must be made soon. It is not only that law students over the county are reaching the point of open revolt but also that law faculties themselves, particularly the younger members, share with the students the view that legal education is too rigid, too uniform, too narrow, too repetitious and too long. In addition, law schools have not faced the consequences of the fact that the profession is rapidly becoming specialized, a fact that has important implications for the law schools' training mission, not only in the three years of formal law study but also thereafter. Finally, though less urgent a demand, the need for highly professional lawyers and the lack of an adequate supply raises the question of increased reliance by the profession on ...[para-legal] personnel to perform less demanding tasks now undertaken by licensed attorneys. (Mayers, 1968: 7)

Many basic factors have contributed to this crisis. Kitch blames the growth of "neo-realism" for undermining the law teachers' confidence in the existence of an identifiable, definable body of material that constituted the "law," and that mastering of that body of material would be useful to the student. (Kitch, 1970: 8, 9). In part it derives from the realization that the "lawyers' long preoccupation with property, to the almost total exclusion of the problems of those who do not own property...", has skewed the law school curriculum in the same direction.[60] (Warren, 1968: 1231, 32;

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[60]One critic found "sixty three of the total courses taught in our law schools relate primarily to wealth, power and lawyer skills, while only eighteen are primarily concerned with anything else. This configuration becomes more explicit when this pattern of emphasis is supplemented by examining the human values substantially neglected by our law schools." (Mooney, 1968: 396).

Pincus, 1967: 436). Viewed from another direction, it is a revitalization of the old call of Professors McDougal and Lasswell for law schools to become policy-oriented institutions, primarily preparing the student for his future social role as shaper of the law in a democratic society. (McDougal and Lasswell, 1943; Speidel, 1968: 606). Antithetical to this "constructive" role, those at the cutting edge of the adversary system charge that the law schools "have literally turned their backs on the profession they serve," so that an erosion has occurred in the technical competence of the Bar. (Boden, 1970: 97; see also Tauro, 1968; Cantrall, 1952). The call for expanding clinical education, although phrased more temperately, in part has the same goal of reforming the curriculum so as to assure that the lawyer, like the doctor, is qualified to "hang out his shingle" and practice, when he is graduated. And over all, it has come to be recognized that the fast-burgeoning volume of the law forecloses agreement upon the teaching of doctrinal body, and has even led some law teachers to "take the strange view that because there is now so much substantive law, the law schools should seek to teach none at all." (Stevens, 1970: 37).

Surface symptoms of the underlying crisis which American legal education faces are found in the "deep malaise, boredom, frustration, and dissatisfaction [which] are erupting in every major law school." (Kinoy, 1969: 1). This constitutes more than the chronic student ailment of second year slump and third year apathy. Not so long ago, some law schools were requiring the completion of an extra summer-session or comparable period beyond the standard three year schooling, and the addition of a full fourth year of law school was being advocated so as to permit grasp of the expanding body of the law. (Stason, 1959: 9). All this has died down--for one thing, the students would reject such an extension. Rather, the same phenomenon is being reappraised in light of the heterogeneity of the legal profession, and the impossibility not alone of equipping a law student with a knowledge of the whole law but even to anticipate the portion in which he will profesionally practice, so as to prepare him to become expert in that. Instead of lengthening schooling, law schools are adopting a number of devices to speed the standard program, and all signs point to the elimination of the third year just as soon as it is dropped as a condition for accreditation and

the taking of the state Bar examinations.[61]

As centers of legal writing and research, law schools are also exhibiting indications of strain. A declining interest in the symmetry of case law and statutes is being replaced by increased attention to social and political issues. With the attempted utilization of social science research methods, "law school scholarship seems to be in a quandary, not certain of its future course; whether to move boldly toward the social sciences and perhaps be absorbed by them; to stress the moral nature of law, with the law professors holding forth as high priests and pointing up what is evil in the law and what is necessary to bring about good; or to discard its intellectual pretenses and attempt just to serve the how-to-do-it and easy reference needs of the practicing profession." (Johnstone and Hobson, 1967: 53).

As summarized by Professor Hazard, the challenges currently faced by legal education are three-fold: The object of legal education cannot be to train apprentices, since it is impossible to predict what the work of graduates will be. "...[T]he aim of legal education has to be the cultivation of the mind for a life-time of presently undetermined activity...the function of law school is to pursue general and frankly theoretical analysis of legal processes and institutions." (Hazard, 1968: 189). The second challenge arises from the growing understanding of the complexity

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[61] Stanford Law School has already established a two year program for those students not planning to practice law. (Ehrlich and Headrick, 1970: 457). Also see address of President Edward Levi of the University of Chicago at the law school of the University of Pennsylvania suggesting that law schools "give a reasonable early termination point to those [students] who wish to leave formal law training after two years of study." (Congressional Record, 1969: 14387). The advance draft of the report on the study of law curricula commissioned by the AALS, and supported by a Ford Foundation grant, contemplates only two years of formal classwork, and a "perfunctory" third year so long as accreditation requires the equivalence of a three year program. If the education and licensing of lawyers as specialists by the ABA materializes, there is a strong possibility that there will be a general reduction of the duration of basic legal education to two years. All of these proposals for reduction of the general law school program by excision is distinct from compression of existing programs into more intensive offerings. (See tri-semester plan of Cavers, 1963: 475.)

of how legal processes actually work. This expanded conception invites the social sciences into the law school and puts the functions of law and the legal profession in more realistic context. "The third development...[is] the waning of confidence in basic interpretations of political and social morality." "Possibly the greatest challenge for legal education, therefore, is that it undertake to be rather more intensely concerned with political and social morality than it has been in times more assured, and perhaps more innocent." (Ibid., 193, 94).

Faced with these challenges, all law schools in the nation are confronted with the necessity of re-examining their curricula. Some are learning that traditional subjects "can be taught in the context of contemporary issues, including the problems of urban society, criminal justice, poverty, racism, and even war and peace." (McKay, 1969: 275). In addition, the very nature of the school program is being substantially altered by vastly expanded clinical efforts. Most of the law schools responding to the Legislative Reference Bureau questionnaire noted that their curricula included programs designed to facilitate student action in civil rights, environmental law, poverty legislation, or other comparable areas. They are teaching many courses designed to cope with contemporary problems which were not offered 10 years ago. The variety of reported faculty-initiated and student-initiated programs evinces a marked broadening of law school interest across the whole interface of law and society.[62]

In the light of the current ferment in legal education, to attempt to differentiate law schools between those which are "innovative" and those with "fundamental" curricula is to raise an artificial dichotomy. The reality of the situation is that today all law schools are faced with innovative redefinition of their functions. A few schools are content to be replicas of others, so that changes in their curricula will occur over time in the form of delayed response. Most schools, including all of the pattern setters, are currently engaged in actively altering the nature of their students' law school experiences.

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[62] For a partial survey of some of the changes now occurring in law school curricula see Papale, 1968: 76.

Shape of Future Curriculum: What form the future law school curriculum will take remains unclear. Possibly it is adumbrated by former Chief Justice Earl Warren's observation that "the role of law in society has changed and is still changing, and it is axiomatic that the role of lawyers must change, too." On a parity with business law must be placed "criminal law, social welfare, urban planning, labor relations, monopolies, problems of the mentally ill, civil rights, international law, and public housing." (Warren, 1966: 452, 53). This listing would identify social relevance as one of the characteristics of the new curriculum.

Most likely the curriculum of the law school will stress the training of students for "careers in the law" rather than "practice of the law," which will structure it more broadly and diversely than necessary to prepare the student for advocate practice. Concomitantly, there will be more functional law, rather than adhering to the traditional categories with antecedents harkening back to the days of Langdell. "The categorical approach necessarily limits the consideration which the subject may encompass. The functional approach, on the other hand, forces the professor and the student to see the many facets of a problem, not all strictly legal." (Yegge, 1967: 21, 22).

Quite likely the pedagogical methods adopted will call for the addition of self-taught, non-classroom courses. (See Rohan, 1964: 296). It is almost certain that the new curriculum will see experiments with massive doses of clinical experience --"clinical" being expanded to be more than the just narrowly "practical". Perhaps this may include field training dispersal as far flung as UCLA Law School's students presently in Washington, D.C., American Samoa, and on Saipan in the Trust Territory of the Pacific Islands. (Price, 1970). Under revised rules of all states, students will probably engage in limited law practice.[63] The crucial question relative to the instituting and maintenance of each new clinical endeavor will be whether the benefits exceed the costs, for good educational supervision is an essential quality, and it is very costly.

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[63]Already the rules of California permit the student to act on behalf of an indigent person or governmental agency in the absence of a supervisory attorney. (Rules Governing, 1969: 724).

What is less clear is how the law schools will respond to the crucial problem of specialization. The idea of a unitary profession has been questioned, and, similarly, that all law schools should have the same functions is being challenged. One result may be to sharpen up the identity of law schools, so that some admittedly will be "big firm," others "small firm" schools, and others will become primarily skills-oriented institutions, or policy-oriented. Students when enrolling will do so with foreknowledge of the specialized education in store for them (Stevens, 1970: 41; see also Johnstone, 1966). An alternative would be to reserve specialization until mainly the third year of schooling, but with a good deal of distinction recognized between schools at that point (see Goldstein, 1968: 161f). As decisions on specialization now tend to be determined by offers of employment, a substitute would be for reserving training as a specialist to post graduate work, like residency in medicine (Powers, 1968: 1220). And of course, if the licensing of lawyers as specialists is adopted, this will provide additional incentive for cutting the standard three-year program down to two, and in lieu adding a year of post-graduate specialized work.

The prospect of establishing a new law school raises the operational problem of how to accommodate both current curricular practices and anticipated future change. "...[I]n the end everyone must rely on the new dean to interpret the needs and shape of a legal educational institution." (Barrett, 1968a: 10). Once selected, he is then faced with the problem of strategy--whether he should establish the initial academic policy of the law school while operating essentially on his own, or whether he should recruit the best possible faculty without regard to their commitment to a specific plan, leaving as many avenues as possible for future development of the law school at the time it is set up. Whichever he chooses, it is too simplistic to contemplate the future course being determined solely in the dust-shrouded recesses of the research library or in response to the argument of trial counsel engaged in legal combat. There is no single, compelling ordered schema of curriculum content to which all reasonable men will quite naturally agree. The curriculum which will eventuate over time will be the resultant of the response "to the demands of...teachers,...students, the bar, and the large part of our population which will find increasing need for the services of legalists, if the demands of the last do not become a part of those of the bar" (Cox, 1968; 269), all as given single shape through the skillful leadership of the dean.

Chapter IV

ALTERNATIVE TYPES OF "LAW SCHOOLS" FOR HAWAII

The 1970 Conference Committee report, pursuant to which the Legislative Reference Bureau is conducting this cost benefit study of a law school, also requested that the Bureau "evaluate alternative types of law schools that may be established". At the time the study was initiated, only the Warren and Mearns model had been detailed in the form of a printed proposal, offering a three-year, standard curriculum and supplemental programs such as continuing education of the Bar, all comparable to what is found in good law schools on the mainland. Subsequently, Professor Thomas Ehrlich and Dean Bayless Manning, as consultants to the University of Hawaii, presented their report, "Programs in Law at the University of Hawaii" (Ehrlich and Manning, 1970).

Ehrlich and Manning Model: The thrust of the Ehrlich and Manning model, briefly stated, is that Hawaii ought not necessarily mimic the mainland, but rather decide on the programs in law training which will best meet the Islands' needs for and uses of legal training. In essence it recommends a professional training program in law which will start with a third-year plan, and at some unspecified time beyond 1975 will see the establishment of a full three-year institution. In addition to the proposed interim plan, a para-professional training program would be instituted at various branches of the University. And finally, their proposal envisages other programs in law, such as continuing education of the Bar, training for judges and law enforcement authorities, and, possibly, a program in law for high school students. As supplement to the interim third-year plan, they also recommend a revolving loan and grant fund which would permit Hawaii students in financial need to borrow or receive grants to meet costs of mainland legal education for at least the first two years of schooling; repayment of loans would extend over a period of time after graduation.

Both proposals contemplate quality professional training in Hawaii. That of the Warren and Mearns model is patterned after the programs offered by "national" schools on the mainland. The Ehrlich and Manning model, while in the interim third-year stage, would:

> ...at least initially, focus on relatively few areas of particular importance in Hawaii. The governmental process, trial practice, and land-use planning appear to us as among the most appropriate areas. In their first two years of mainland education, students in the program would have already gained a solid grounding in legal skills and a basic knowledge of substantive law. The interim third-year plan would provide them, in a thoroughly academic context, an overview of and a working familiarity with the actual operations of the Hawaiian legal system. (Ibid., 30)

Although not warranted, a "local" law school label--with all of the elitist distinctions this implies--may attach to such a school, due to the emphasis on Hawaii problems in the third-year interim program, coupled with the likelihood that graduates would practice only in the Islands because the school's unaccredited status forecloses their meeting minimum requirements for admission to the Bar in half of the states on the mainland. (See also, infra, p. 86.)

A digression here is in order: "national" law schools may be termed the "Establishment" of legal education. Having widely recruited student bodies with high academic credentials, distinguished faculties offering curricula pointed to national problems, they are located in both private and public universities of recognized standing with substantial resources. They have been accused of modeling themselves on graduate faculties in those disciplines where the professional preparation for the Ph.D. is for research and writing, and not for practice (Pincus, 1970: 18-20). Paralleling the fission in the American Bar, "these are predominantly big firm schools" (Cavers, 1968: 141, 142). The objective factor useful as a rule of thumb for distinguishing between a "local" and "national" law school is the geographical distribution of the school's student body. However, this is not an absolute criterion, as witness the rise to national prominance of the law school at the University of California, Davis, whose student body is almost entirely composed of California residents.

Candidates from a "local" law school come mainly from a particular state, most of its graduates practice in that jurisdiction, and "in a very real sense...[it is] an integral part of the legal system of the state in which it is located" (Conference on Legal Education, 1959: 133). Such a school tends to place more emphasis upon preparation for the practice of law, and correspondingly turns less attention to the critical examination of the law of a character which distinguishes academic scholarship. Many of the same case books and teaching materials are used in courses offered by "local" and "national" schools, so that a "local" law school is not by definition solely a school of local law. Patterning the curriculum of a new school in Hawaii on that of the "Establishment" will not assure recognition as a "national" law school, nor ought its concern with local problems necessarily result in its being tagged a "local" law school.

As evidenced by the Ehrlich and Manning report, a legal training institution for Hawaii may be structured in a manner differing from the conventional, three-year law school. But the choice does not have to be narrowed to just between these two "models", for there are others as well. Indeed, the Ehrlich and Manning proposal represents a combination of a number of these alternatives. Some are exclusive; others

are not, so their elements may be combined. To describe some of these "models" may be but to reject them out of hand, for they may be patently infeasible for Hawaii. Nevertheless, such delineation does not represent a futile effort, for it both narrows down the potential choices and also reveals how a program of legal training for Hawaii can well be a composite of sub-programs, each designed to achieve a separate objective, but all combined under a single, over-arching purpose.

A wholly undergraduate school, or a part-time evening law school are two alternatives to the normal three-year, graduate, professional institution. The substitute of no law school may also be posited as a choice, in the form of financing attendance of Hawaii students at mainland institutions. A partial substitute would be to have only a truncated law school in Hawaii, with part of legal training on the mainland. At the other extreme, the scope of the law school may be expanded, so that legal training is offered in many more forms than just for the professional practice of law. And pursuing this even further, the whole approach to the teaching of law as a separate discipline may be revised, so that the law school is fully integrated into the university.

1. The Financial "Facilitating" Model.

At the present time, Hawaii has no school for professional education in the law and only minimal capacity for other forms of legal training. The first alternative which logically suggests itself is not to set up a law school in Hawaii, but rather to continue the status quo. As a substitute, the State through financial aids would facilitate legal education of Hawaii residents on the mainland. This would attempt to assure all qualified students are able to receive a legal education. Since at the moment, para-legal training is only at the talking stage on the mainland, the financial "facilitating" would need be directed to the furnishing of professional legal training, comparable to that which island residents now seek on their own resources.[64]

As there is a complete absence of information on how many persons make no effort to obtain or fail to complete a legal education due to inadequate personal resources, there is no guide for inductively estimating the cost of the financial "facilitating" model. However, by looking at the cost to the State of other law school models, it is possible to determine how much financial "facilitating" could be

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[64]As few of these students attend four-year, part-time evening programs, the discussion of the financial "facilitating" model will be limited to the cost of full-time, day education.

accomplished with the same amount of money.

Once the Warren and Mearns model law school is fully operational, with an enrollment of approximately 250 students, it is estimated that the annual costs will be about $838,900 (supra, p. 26). If the details of the Ehrlich and Manning model for just professional education are referred to, fully operational (approximately 90 students) the proposed model would cost annually from about $337,000 to $385,000, depending upon how administrative overhead for nonprofessional legal training is allocated. For per student comparisons, the Warren and Mearns' costs will approximate $3,357 per student; the Ehrlich and Manning costs will run from $3,743 to $4,276.

The net cost to the State will, of course, be less than the figures just cited, depending upon the amount of tuition charged. Assuming that it is fixed at $1,600 annually--the rate suggested for the initial classes by the Warren and Mearns report--[65] the net annual cost under the Warren and Mearns model would be $438,900, and under the Ehrlich and Manning model would run from $193,000 to $241,000. Using the largest figure ($438,900), the same amount of money would be equivalent to:

Major costs[66] of 114 Hawaii students attending 8 prestige law schools (median of $3,830); if limited to just tuition and fees, 190 students attending these schools (median of $2,310).

Major costs[67] of 153 Hawaii students attending both private and public law schools (median of $2,867); if limited to just tuition and

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[65] In comparison to rates of other public law schools, this would appear to be high for resident tuition.

[66] Based on 1970 median out-of-state tuition and fees, cost of books, and room and board expenses, all as estimated by 6 institutions returning LRB questionnaire, and 2 from published 1969 data. (Schools: U.C. Berkeley, Chicago, Columbia, Harvard, U.C.L.A., Michigan, Stanford, Yale.)

[67] Based on 1970 median out-of-state tuition and fees, cost of books, and living expenses as estimated by 52 institutions returning LRB questionnaires and 56 wholly or partially from published 1969 data.

fees,[68] 294 students attending these schools (median of $1,493).

Major costs[69] of 169 Hawaii students attending publicly supported law schools (median of $2,591); if limited to just tuition and fees,[70] 382 students attending public schools (median of $1,147).

Depending upon the facilitating plan adopted, and the class of school upon which it is conditioned, from 114 to 382 Hawaii students might be aided each year. The potential number graduating each year would, of course, be one-third of this total.

It should be added that none of these computations include the cost of transportation between the Islands and the mainland, extra clothing outlays, or incidental expenses. Also, food and lodging estimates being only approximations, in many cases they appear to err more on the low than the high side. Even should the largest per student sum shown in the comparative data ($3,830) be employed--which, of course, would facilitate education of the smallest number of students--some Hawaii residents would probably still have to obtain additional financial aid before they would be in position to avail themselves of state financial law school training assistance.

A related, but separate matter, is whether such financial assistance should be offered through form of grant or loan, and also, whether it ought be conditioned upon the meeting of a "needs test". Obviously, if the State were to opt for a loan program, its net cost would be markedly reduced.

Over a period of thirty years (1934-64), Harvard loaned a total of approximately $2,650,000. At the end of the period, there were

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[68]Based on 1970 median out-of-state tuition and fees of 89 institutions returning LRB questionnaires and 45 for which published 1969 data were available.

[69]Based on 1970 median out-of-state tuition and fees, cost of books, and living expenses as estimated by 34 publicly supported institutions returning LRB questionnaires and 27 wholly or partially from published 1969 data.

[70]Based on 1970 median out-of-state tuition and fees for 48 publicly supported institutions returning LRB questionnaires and 19 from published 1969 data. (In this and previous computations, only full-time day tuition utilized; solely evening law schools excluded. To the extent possible, 1970 tuition and cost data were used.)

about $1,270,000 in the form of student loans outstanding, and $1,480,000 had been repaid. All loans were on definite time terms, interest at 2 per cent during schooling, and at 4 per cent upon graduation. The portion uncollectible, plus the cost of collecting delinquent loans, equalled about 1-1/2 per cent of the total amount loaned and about 14 per cent of the interest received. In short, Harvard's experience with loans to its students has been very favorable (Griswold and Toepfer, 1965: 329).

Until recently, the American Bar Association also was engaged in the making of loans to law students, furnishing up to $1,500 annually for second and third-year day students, and $1,000 annually for second, third, and fourth-year evening students, both with a total maximum of $3,000. During the five-year period the program was in effect, a little over $4,100,000 was loaned; $2,700,000 remains on the books and is being repaid, with about an additional $150,000 in arrears. Initially, terms of repayment were flexible, but difficulties associated with renegotiation resulted in conversion to fixed annual repayment. Interest rates were set at 6 per cent during the first four years of the program, and at 7 per cent in the concluding year. As normally a law school education will contribute to a larger lifetime income, there appears to be relatively limited risk associated with loans made to law students. However, repayment would necessarily be linked to the nature of the economy, so that a short-period repayment plan would exacerbate the delinquency rate, since the plan would fail to take advantage of the long run, anticipated rise of lawyer income.[71]

Undergirding the proposal for grants, loans, or other financial arrangements by which Hawaii students are to be aided in undertaking law school education on the mainland are two assumptions: (a) that there are mainland schools in which they will be able to enroll, schools of sufficient quality to meet the State's expectations of their returning to the Islands adequately educated; (b) that once financing is available, those students who are now discouraged from attempting a legal education will apply for financial assistance and enroll in mainland legal institutions.

As discussed on pages 28 to 40, with the pressure on law schools continuing to mount, there is increasing certainty that students from

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[71] One school reported making "conscience" grants which its students were expected to repay; since there was no legal compulsion, such payments constituted "gifts", and so were deductible for income tax purposes.

Hawaii, on the average, can anticipate being accepted by fewer schools providing quality education. Students who have demonstrated superior performance, when enrolled by a "national" school, may most likely apply to them for financial assistance, since these schools tend to have the greatest resources. The major need for financing is undoubtedly being experienced by the bulk of the students who would attend the less prestigious, and on the average, less well-endowed institutions. Even if Hawaii's students do succeed in gaining acceptance, in view of the nature of the schools in which many will probably enroll in the future, the question arises of whether the expenditure of comparable funds could not buy better educational training in Hawaii.

There is less certainty when addressing the question of how many Hawaii residents, when offered financial assistance, would avail themselves of the opportunity of pursuing legal education on the mainland. There is a suspicion that attendance of an institution of higher learning by persons in lower income categories is affected by the mere fact of its presence in the student's home community, and having to go elsewhere reduces attendance (Trent and Medocer, 1968: 27).[72] Whether a person may remove himself to the mainland would depend upon the nature of his total commitments, such as family responsibilities which require contribution in support far greater than could be forthcoming from any grant or loan program. To the extent that potential students are married and have small children, this considerably reduces their mobility; probably any financing scheme would be insufficient to permit their surrendering the assistance of family members which while in the Islands allows one of the spouses to work while the other attends school. And pertinent here is the survey of Hawaii-educated persons recently admitted to the Bar that indicated about two-thirds favored a Hawaii-based law school over a partial grant for mainland study, the latter conditioned upon return to the Islands (supra, p. 13).

A variant form of the financial "facilitating" model would be for the State to directly enter into arrangements with mainland institutions for the purpose of reducing the educational costs that the student would be expected to bear. Such arrangements may be consummated through the services of the Western Interstate Commission for Higher Education (WICHE). As a WICHE student, a Hawaii resident would pay a lower tuition charge. At a state-supported university, he would

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[72] Although this source will be found cited for the proposition stated in the text, it did not separate financial from distance factors.

pay the tuition exacted from residents of that state; at a private school, he would receive a substantial reduction on the standard charge. The State of Hawaii through an appropriation from its treasury would send each receiving school a supplemental fee to help meet the expense of educating the WICHE student.

The State of Hawaii would establish the requirements for its certification and set the limit on the number of students to be included. The schools, themselves, would determine which applicant they would accept. Some schools may give certified applicants preference over similar qualified out-of-state students who are not part of the WICHE program, but this is not assured. As a consequence, a student might be certified as eligible by Hawaii, and yet fail to satisfy the requirements of the school to which he applied. In 1969-70, there were 640 students obtaining medical-related professional training outside their home state under WICHE auspices. There is no comparable WICHE legal training program now underway, but upon proper request, and with necessary financing, it would be willing to entertain a request for administering such service.

It is unlikely that any law institution would promise a fixed quota or a number of openings, annually, for Hawaii students, and it is almost certain that they would want to do their own screening. Should more than one or two students on a more or less regularized basis come to be accommodated by an institution, the State might be requested to provide, in addition to the differential between resident and out-of-state tuition, the cost of overhead for the education of such students. Ever greater difficulty is being experienced in placing students within the Western states, due to the expansion of population in the region and the enrollment pressure being placed upon its educational institutions. As a consequence, though this alternative form of a financial "facilitating" model might serve to meet the immediate needs of the State, it cannot be considered as a permanent-type arrangement for continuing to assure the legal education of Hawaii's qualified students.

2. The Time Model.

One of the reasons advanced for establishing a law school in Hawaii is that those who are financially unable to attend a mainland institution would thereby be enabled to receive a legal education. Inferentially, this implies that some must support themselves by either part or full-time employment. Logically, scheduling classes at times designed to facilitate students working while attending school would flow from such decision to have a Hawaii-based school. The time model--

whether the school should be full-time, day or part-time, evening--therefore becomes relevant.

For the University to plan an evening law school would be a step counter to the general trend in legal education throughout the United States. Today, only a handful of schools accredited by the American Bar Association conduct solely evening classes, although about two-fifths of all schools have both day and evening programs. Less than this proportion of the total number of students enrolled in accredited law schools attend evening classes. The long-run reduction in "night law school" can be traced to a number of causes: the desire to upgrade course content and instruction, application of federal draft exemptions to only full-time study, availability of scholarship payments in some states only to full-time study, and greater attrition experienced in part-time programs.

There is no question that in evening instruction fatigue becomes a great factor. In addition, there is a relative lack of curricular enrichment in the form of seminars and student research projects, owing to restricted student ability for undertaking anything so time consuming. Lack of student time is also evidenced in study patterns, library use, and collateral reading. The limited opportunity for law school related extra-curricular activities, or even to participate in "bull sessions" with fellow students, detracts from the self-education characteristic of enrollment in law school (Hayes, 1964: 78). As phrased in one university law school bulletin, "The study of law in the evening is a difficult undertaking that requires heavy sacrifice, and a prospective student should carefully consider his other commitments before making his decision." (University of San Francisco, 1970:10).

The students attending an evening law school are not necessarily less qualified. If anything, they probably have more motivation than full-time, day students. It would appear that the difference between day and evening law schools is one mainly of the academic resources of the schools. Attitudes and performance of students and teachers seem to differ more on the basis of whether the institutions they are associated with are high or low "resource" schools than the fact of a school being a day or evening school (Report on the Study, 1969: 39). Law school alumni asked how people whose opinions they value compare day and evening law graduates with respect to quality of professional craftsmanship, opportunities for advancement, reputation for ethical conduct, and overall status and influence in the Bar have reported that evening graduates come off less well than day students in every category (Ibid., 39).

The trend toward eliminating evening law schools, and the general prevailing attitude which questions the adequacy of the night school graduate counsel against establishing such a school in Hawaii. Administrative difficulties counter-indicate the variant institution with both day and evening programs. Mainland experience demonstrates that to run two time-distinct programs practically mandates two separate faculties, with a resultant erosion of one faculty, and slighting of students in one program in order to accommodate the other. Illustrative is the assigning of the bulk of administrative and counseling staff to day schedule, with only minimal assistance available for the evening part-time students. This negative experience has been one of the explanations for several schools on the mainland recently abandoning their successful evening programs. An alternative which resolves some of these administrative difficulties, while still enabling students to have outside employment, is to run two programs during the day, courses being scheduled so as to permit some students to graduate in three years and others in four. From published enrollment statistics, it appears that about a dozen law schools on the mainland now make provision for part-time, first degree law students to attend day classes. In each case, this group of students represents only a very small proportion of the school's total student body. Short of this minor modification, Hawaii's anticipated limited student enrollment would not appear to warrant other than a full-time day program.

3. The Undergraduate Model.

The system of legal education in the United States differs sharply from that found in most other parts of the world. In contrast to the American graduate pattern, foreign law schools are geared to the undergraduate college student. The law degree serves to identify the capacity of its holder for commercial, industrial or government post, as well as being a lawyer, and the curriculum is not shaped primarily to the needs of those students who contemplate active legal careers. Supplementing such education, the Bar of these various jurisdictions takes responsibility for the further professional training of those who propose to enter practice.

A persuasive case can be made for adapting this foreign experience by so structuring an undergraduate program as to point up its legal orientation, and then utilizing the program both for providing professional training and eliminating common deficiencies in American academic education. Such a curriculum would consist mainly of an integration of the humanities and social sciences, focused on their relevancy to law, complemented with doctrinal and skill courses considered necessary for the training of the professional lawyer.

With the first law degree obtained from an undergraduate institution, the graduate efforts of law schools could be directed toward advanced courses preparing for specialization, and research characteristic of a graduate institution. The attention of both would be turned to matters of academic interest and also to problems of concern to the practicing members of the profession.

Before coming to law school, present policy encourages the American student to study widely, with little guidance, across the entire gamut of undergraduate education.[73] Once in graduate law school and past the "basics", he finds himself faced with a proliferation of courses, some of whose subjects could well be the concern of a university undergraduate liberal arts offering. To counteract both this mal-direction of pre-law training and integrate his total university program, abstractly considered there is much to commend the undergraduate law school.

So much for logic. To advocate the reversal of the American practice of adding a layer of graduate, professional legal education onto a separate, and sometimes disparate undergraduate preparation would be only to propose the impossible. The history of American law schools has been one of conversion to fully graduate enterprise, admitting only holders of four-year undergraduate degrees. The "national" schools and more than two-thirds of all the law schools in the Nation presently require a college degree for admission, and in the remaining schools, a great majority of the students hold undergraduate degrees ("The right of law...", 1968: 5). The American Bar Association proposes to withhold accreditation from any law school not requiring "as a condition of admittance at least three years of acceptable college work" (American Bar Association, 1969: 1), and pressure is strong for raising this criterion to possession of a four-year bachelor's degree. There is no reason to believe that any exception would be made for Hawaii's experimentation with an "undergraduate law school". The whole course of American legal education has been toward elevating it to full graduate status, and Hawaii would hardly be in position to reverse this tide.[74]

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[73] It is taken for granted that law is peculiarly a discipline where every branch of knowledge will prove useful to the student and the practitioner.

[74] Closer ties between legal education and the balance of the university effort is discussed further as part of the "integrated" law school model, supra, pp. 90ff.

4. The "Multi-Tract" Legal Training Model.

Central to the Ehrlich and Manning report is the theme that Hawaii's needs for legal training are broader than can be encompassed by erecting a law school furnishing only traditional professional training. In lieu thereof, it recommends "multi-tract" legal education by the University of Hawaii. Professional legal preparation, training of para-legals, and post entrance training for the practicing profession are three areas to which it refers. Broadening thereon, a fourth track might be included: training for the prospective practitioner after he has graduated and before admittance to the Bar.

The specialization which has already occurred in the legal profession points to the abandonment of the "single license" system for the furnishing of legal services, and as a consequence law school curricula would need to undergo marked change. Each law school would then concentrate its attention upon one or more areas of specialty, with "general practice" at best being regarded as just another specialized form of professional legal education (see supra, p. 67 for treatment of specialization). At first glance, adoption of specialized curricula would appear to constitute further illustration of multi-track legal education. However, notwithstanding a particular school structuring a number of specialties, all would fall within the single category of education preparatory for professional practice.

In one form or another, continuing education programs for the members of the Bar exist in practically all states. The interest of the Hawaii Bar in opportunities for further technical training, together with the satisfaction expressed over past ad hoc efforts to the same ends, counsel the inclusion of a CEB (Continuing Education of the Bar) program as part of law school planning for Hawaii. Illustrating the size and diversity which such a program might assume, during the fiscal year 1970, close to 33,400 California lawyers enrolled in lecture programs or purchased books and tapes produced by that State's continuing education program.[75]

Both the Warren and Mearns report and the Ehrlich and Manning report stress the value of a continuing education program to improve the professional competency of lawyers throughout their careers. "Such

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[75] In California, the University of California and the State Bar jointly sponsor CEB activity. The CEB staff are university employees and the lease for the CEB quarters stands in the University's name (see "CEB Governing Committee...," 1970: 1).

a program might have a number of components designed to serve a number of different purposes. One component, for example, could provide specialists with advanced education in their own particular field. A second might offer training on current developments and areas that are rapidly changing. And the third might give basic instruction in a subject for lawyers who have little or no education or experience in that subject." Availability of law faculty, whether actually conducting the training or only involved in its design, is recognized as a major factor contributing to the adequacy of such a CEB program (Ehrlich and Manning, 1970: 11).

Midway between the professional education of the traditional law school, and post graduation activities under CEB programs, are the pre-admittance, Bar review courses conducted by practitioners or law professors. These courses attempt to furnish their enrollees with a quick and intensive refresher in the fields of law apt to be covered by the Bar examination. Graduates of prestigious "national" law schools will be found enrolled alongside colleagues who have received their legal training at the marginal "local" law schools. These review courses "are fringe institutions that neither law schools nor Bar examiners like to admit are necessary, and their prevalence and high enrollment raise questions about legal education and Bar examinations that both schools and examiners are reluctant to discuss" (Johnstone and Hobson, 1967: 55). Recognizing this as one of the legal training tracks of a Hawaii law school ought assure the school's sense of responsibility not alone for the review course, but, more generally, for preparing its students to take the Hawaii Bar examination.[76]

Allied with the "review course" track, could be the conducting of skills training courses. An example of what might be encompassed is provided by New Jersey, where such a course has served as an optional method for satisfying that State's clerkship requirement. This is in line with the recommendation of the 1963 National Conference on the Continuing Education of the Bar, held at Arden House, New York, which "calls for the development of an all-inclusive practical skills course of two to six months duration, which would ultimately become a pre-requisite to final admission to the Bar" (see Jarmel, 1965: 433).

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[76]Lest this proposal for a "review course" be treated as calling for a substandard law school, the tentative draft of the AALS's curriculum committee under the chairmanship of Professor Carrington contains a comparable proposal for the "perfunctory" third year of law school.

It would hardly appear necessary to elaborate upon professional legal education as the third track of a "multi-track" legal training model. To this point, the bulk of the report has been primarily concerned with such professional preparatory education. It is patent that given any major effort in Hawaii to provide legal training, the core of the endeavor will consist of educating students for the professional practice of law, this regardless of the particular form which the law school may take.

A fourth track of courses which would be encountered in a "multi-track" model would consist of one or more related programs for the training of para-legals (for para-legal training see Christensen, 1970: 46ff; Yegge, 1969: 66ff; Brown, 1969: 94; Selinger, 1968: 22). Depending upon the needs of the State, the resources of the University, and the availability of faculty, para-legal training may be restricted to those occupations which directly serve under the immediate supervision of the practicing lawyer, or may fan out broadly so as to encompass all occupations in which some formalized training in the law would enhance performance. Illustrative of the former would be a curriculum designed for legal secretaries and law clerks; at the other extreme would be a course on forensic medicine for prospective medical doctors, on zoning for engineers, land law and conveyances for real estate brokers, and comparable other distantly related law training areas. Between the two poles would be found training programs for title searchers, trust officers, law book editors, claims examiners and adjusters, all potential adjunct services for lawyers, but not necessarily functioning under their direct supervision. Persons providing legal advice on a fairly narrow range of problems, as those associated with housing or debt adjustment, under legal aid, or service in the public defender's office, might receive university training specially designed for these assignments.

In all of these endeavors will be found an element of simplification, either of technical problems through the use of standardized legal forms and procedures, or through narrowing identification of subject matter, so that while it remains highly complex, the scope of law covered is sharply reduced. In all of these law-related endeavors, due to their para-legal character, the legal profession has both a legitimate interest and an attendant responsibility.

Without intention to belabor the matter, the legal profession is fast approaching a bench-mark point which a number of other professions have already passed. All signs point to the institutionalizing of para-legal practices, this distinguished from the law school trained professional admitted to practice before the Bar. It is already

acknowledged that the legal Cannons of Ethics do not limit the lawyer's assistants to persons who are admitted to the Bar, so long as the lay persons do not perform things that lawyers only may do. In 1968 the House of Delegates of the American Bar Association endorsed use of non-lawyers in serving a client's needs, resolving in part that "the profession encourage the training and employment of such assistants" (cited in Yegge, 1969: 67). Currently, a special committee of the American Bar Association is preparing a report to the House of Delegates which will suggest certification of programs for the training of para-legals.

"The inevitability of the emergence of...[para-legals] does not ensure that it will be handled wisely. In fact, we are inclined to bet otherwise, unless the law schools become involved in planning and designing the training and in setting the standards for...[para-legals]." (Ehrlich and Headrick, 1970: 467). Law school relationship will encourage interaction between future professionals and para-legals, giving each better insight into the roles of the others. More subtly, it will aid the assertion of the professional claim to ascendancy over the sub-professional, while the association will transfer to the latter a degree of professional prestige. Through institutional ties, it may be possible to facilitate mobility from para-legal to professional status, upon attaining additional qualifying education. In reverse order, the student doing poorly in law school or disenchanted with the prospect of private practice, may be encouraged to transfer to a para-legal program.

With the University of Hawaii's incorporation of both community and four-year colleges within a single administrative system, it becomes feasible to plan a varied program of para-legal training, part of which will be "packaged" in terminal two-year or shorter time capsules at the community colleges. Other portions of the program might be more appropriate for a four-year campus, as one concerned with family counseling. The professional staff of a law school would be interested in delineating the respective roles of professional and para-legal, and in assuring that the academic content and pedagogy of all para-legal training at the University are soundly based upon an adequate understanding of the law profession, judicial institutions and the judicial process, and the legal subject matter pertinent to the respective para-legal occupations. But in most cases, such staff would hardly be equipped nor could be expected to provide the detailed technical instruction requisite. As a consequence, while in other states it may be necessary for the professional law school to itself offer para-legal training if it is to be undertaken at all, both logic and administrative symmetry support the placing of para-legal programs throughout the whole of the University as appropriate, with each maintaining ties with the faculties responsible for educating on the professional track.

For Hawaii, situated in the mid-Pacific, there is presented an unusual opportunity to aid the island regions to the south and west in servicing their law-related needs. Comparable to the para-legal situation, training of shorter duration and more specific orientation than that afforded by the normal professional law school curriculum could be offered to residents of these areas who do not possess the requisite minimum college preparation for enrolling in professional law schools. The education of medical practitioners at the schools in Suva (Fiji) and Port Moresby (Papua-New Guinea) may be regarded as analogous. The role of such persons will be in part to supplement the activities of the practicing lawyer, and in those areas of Oceania where there is a dearth of professionals, to act as their substitutes. External funding for this form of special training may be available from federal agencies.

The institutionalizing of the para-legal is bound to have a major impact upon the whole practice of law in Hawaii. Rules governing professional practice must be revised so as to recognize the legitimacy of para-legal services. The respective spheres of professionals and para-legals have yet to be determined, as well as their inter-relationships. As a consequence of the newness of the para-legal concept, it would appear both politic as well as administratively sound to first structure the professional law training track. Once its faculty becomes fully conversant with the Hawaiian scene, and in turn the members of the Bar come to know faculty members and respect their competence, both the status of the on-going professional training program and the prestige of its faculty can serve as guide and shield for developing the university's para-legal program.[77] In fixing priorities, all of the other legal training tracks would thus be better deferred until after the professional law track.

Except for the relatively small expenses incurred for administrative coordination and overhead support, which are absorbed by the University directly or through the budget shown for the professional training track, the participants in the CEB and the Bar qualification programs can be expected to meet the full costs of their respective instruction. With regard to the professional legal education track, the costs as previously discussed in this report for a Warren and

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[77]This necessity to build community rapport may well counter-indicate any extensive use of visiting faculty, such as contemplated by the Ehrlich and Manning interim third-year model, at least until after para-legal training is soundly established.

Mearns type, three-year law school, would not be particularly modified by virtue of the institution of any other form of legal training. Of course, each faculty member enjoys a degree of discretion in the allocation of his own working hours between research and service, over and above teaching and administrative responsibilities. If so disposed, part of this time may be assigned to planning and coordinating activities related to one or more of the other legal training tracks, without adding any additional costs above those already budgeted.

There appears to be no professional ethos or comparability of duties which constitutes a centripetal factor dictating location of all para-legal training activities in a single law school building or on a particular campus. They all bear a relationship to law, but otherwise their subject matter interests sharply diverge. It is the strength and interest of the faculty primarily concerned with professional legal training which will serve as catalyst for developing a sense of unity in all of the legal training programs at the University.

Tuition and fees will finance only a portion of para-legal training. The total expense is unknown, for it will be conditioned upon the magnitude of the program--number of occupations encompassed--and the extent to which it may be integrated into on-going community college or university instruction without requiring the employment of additional personnel. Mainland institutions are yet in the state of experimenting with para-legal training, so comparative cost data are unavailable. In any event, a para-legal program for Hawaii would have to be fitted to the Islands' needs, and built incrementally on the basis of trial and error. The Ehrlich and Manning report refers to the training of approximately 40 or 50 students each year at one of the community colleges. It budgets $77,000 for this on the fourth year of the program, plus an unidentified portion of general administrative overhead.

Since little of the para-legal training will be in conjunction with that of the graduate students embarked on the professional legal training track, the only savings apparent from having both tracks associated with the proposed law school is in the joint sharing of faculty for the designing and oversight of the para-legal training activities. Similarly, some of the administrative costs of the para-legal program may be absorbed by the administrative staff primarily assigned to the professional training track. To institute a para-legal program without professional legal training being offered at the University is pedagogically and strategically questionable; on the other hand, the reverse does not appear to assure any material monetary savings over the cost of handling para-legal as a wholly separate undertaking. Non-monetary factors would appear to be the deciding elements

in the timing of a para-legal training program; absolute cost may become the prime determinant for whether or not such a program ought be mounted.

5. The "Truncated" Model.

For a number of reasons, there exists support in Hawaii for assuring that professional law training of Island residents be in mainland schools. Partially, this attitude rests upon the broadening, educational values to be achieved through a mainland stay, counteracting the parochialism that is associated with one's horizons being limited solely to Hawaii. Another reason advanced is that there is a tendency for Island students to lack the oral fluency so necessary for the advocate, and this will be partially overcome by residence in a mainland community. Opponents of a requirement for mainland law school attendance attribute its well springs to residual "plantation mentality".

One way of resolving the dilemma is to structure only a partial law school in Hawaii, necessitating some professional training on the mainland. Conceivably, this could call for only a third year in Hawaii, as is initially proposed in the Ehrlich and Manning report; after the completion of the first two years of schooling, the student would transfer to Hawaii for his concluding year. Hawaii residents desiring to return home and other persons planning to practice in the Islands would be encouraged to so enroll, thus enlarging the State's potential law-trained manpower pool. Alternatively, a school providing the first two years of professional legal training may be started in Hawaii, mandating its students go to the mainland for the third, concluding year. And to refer to another logical combination, a first and third year in Hawaii, with a second year "abroad" on the mainland, is not an impossibility. Notre Dame Law School's second-year students studying at University College, London, in effect, represent a partial parallel of Hawaii's sending its students to the mainland (Keeton, 1969: 1073).

Writing in 1969, McQuade commented, "It is interesting to note that there is no public study of working interaction between law schools. A search of monographs on legal education...as well as many pages of the Index of Legal Periodicals reveals no entries on inter-school activities or cooperation." (McQuade, 1969: 286). As near as can be determined, there are isolated examples of sharing between law schools--lectures, teachers, library materials, etc.--but formalized sharing of students which "logically...is the next and final step to complete academic consortium" (Ibid., 289) occurs on an individualistic basis, at best. Not that students do not transfer between law schools

during the course of their professional training, but this is relatively rarely done, and is individually programmed. Reports have even been received of students completing their senior year at a second law school, transferring the credits back to the original institution, and then graduating from the latter; this, too, constitutes an unusual practice. The historic autonomy and independence of law schools appears to run counter to the concept of consortium, which would find students moving freely between them and other cooperative activity engaged in by the member institutions.

The Ehrlich and Manning "third-year" law school proposal uniquely resolves a number of problems associated with erecting a school in Hawaii. It is in no way addressed only to the matter of having students receive at least two years of mainland education. So long as only a "third-year" model is maintained, the cost of an expensive library and law school plant may be foregone. With the students having completed their basic training on the mainland, the faculty is free to concentrate its attention on a few, selected topics, which should prove stimulating to faculty and student body, and help attract professors who would prefer not meeting classes in introductory subjects. The reported widespread disenchantment of law students with their third-year schooling ought bring many Hawaii residents back to the Islands to tackle legal problems whose relevancy they can personally appreciate.

With the "third-year" law school also go a number of disadvantages. There will probably be an adverse selection factor at work which sees the most promising Hawaii students not returning to the Islands for the third year. Law graduates know they are evaluated particularly by future employers on such factors as the law school they attended and whether they "made law review", their standing in class, and the recommendations received from prominent faculty members. It is questionable that those students who attend prestigious "national" schools, and who have prospects of distinguishing themselves at such schools, will relinquish this for a third year in Hawaii and thereby materially lessen their "saleability" when seeking employment. Those whose chosen careers do not stand to suffer from such loss of status, and students who have not attained top class ranking, will be more disposed to transfer, as they have less to lose. Cumulatively, this implies that despite the attractiveness of any curriculum proposed, at least initially, the average student body will most likely not be a distinguished one.

The third year of law school, due to the small size of classes and the nature of work undertaken, is more expensive than the freshman year, and usually even the second year. This will mean that the per

student cost of a "third year" law school will be high. A savings in library and plant is realized for the "third year" model, but under the Ehrlich and Manning report this promises to be only temporary. At some future date it is contemplated that the school program will be expanded to a full three years. Unquestionably, the erection of a law school building and the acquiring of a complete library would be required at that time.

Underlying the "third-year" proposal is the assumption that Hawaii residents will continue to be accepted by a wide range of mainland law schools. As already discussed (supra, pp. 28ff), this is becoming ever more questionable. Given the increase in the number of law school applications and the rise in LSAT and GPA cutting scores, students from Hawaii, who are as talented as those who in years past graduated from prestige schools, are progressively finding that only the middling law schools welcome them, and for less qualified students the cut is even lower. A "third-year" model while serving as a means for developing a law-trained manpower pool in the Islands, cannot assure the professional training of Hawaii residents.[78]

All other variants of the "truncated" model share some of the advantages and disadvantages of the "third-year" law school, and in turn have their own strengths and weaknesses. The smaller classes of the typical third-year curriculum can usually accommodate additional students without strain. On the other hand, students transferring from Hawaii to the mainland would find themselves at a disadvantage, having to become socialized to the new environment and possibly foregoing benefits, such as selection for law review editorial board. Some mainland schools' rules now mandate proof of superior performance before they will accept a transferee. Short of Hawaii entering into contractual relations with one or more mainland institutions to accept Island students, average performers desiring to

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[78]One can only conjecture on the reaction of mainland law schools to institution of the "third-year" model. They experience their greatest constraints in the freshman year, before attrition has begun to thin the numbers of the first-year students. Classrooms have maximum seating capacities, and to go to sectioning increases costs. Their faculties cannot be expected to be overjoyed over the prospect of losing students in the third year, when, for the first time, they have relatively greater ability to accommodate them. They will be inculcating the fundamentals and screening out the incompetent, while Hawaii's "third-year" school enjoys the benefits.

transfer may encounter difficulties. Meanwhile the prospect of primarily teaching only fundamental courses in a Hawaii-based school would not seem attractive enough to lure an outstanding faculty to the Islands.

While a student transferring for his third year to another institution will by that time have completed all of his "basic" legal training, the same does not hold true for one moving between institutions for his second year, under a "second year abroad" program. Should Hawaii attempt to overcome this by entering into arrangements which dove-tail curricula of Hawaii and mainland institutions, most likely such schools will request financial consideration beyond tuition, so that the State will be assuming anywhere up to the total cost of the mainland legal education.

All versions of the "truncated" law school model suffer the disadvantage of probably not meeting present requirements for accreditation by either the American Bar Association or the Association of American Law Schools. In the United States, unlike other countries, accreditation is not a governmental activity, but rather one of professional and law school evaluation. In about half of the states, graduation from one of the approved schools has been raised as a condition to sit for the Bar examination. In addition, rightly or wrongly, accreditation is regarded as a means of determining the value of an academic degree (Cardoza, 1966: 420).

While experimentation is encouraged, and while the granting of a degree by any law school apparently requires only minimal residence of at least one year at that institution (two years being at another accredited institution), a "truncated" "third-year" variant in Hawaii, devoid of minimum qualifying library and all of the other accoutrements of a law school, would most likely be beyond the pale of permitted experimentation. An amendment of Hawaii's licensing requirements will permit graduates of such an island-based school to sit for the Hawaii Bar examination, but they will find their opportunities to practice law on the mainland limited.[79] Structuring of only a first year, or even a first and second-year "truncated" law school in Hawaii could run afoul of the same disadvantage, with its students

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[79]For those seeking to practice on the mainland, this could be cured by returning to school for another year of studies, so long as attendance at a three-year accredited institution remains the basis for eligibility. On the other hand, many law school graduates do not actively practice law, and for them lack of accreditation would not represent a disability.

not qualifying as transferees from an accredited school to a mainland institution.

Two solutions have been suggested for securing a law school in Hawaii and at the same time assuring some mainland educational experience. The simplest, from both student and administrative viewpoints, would be to require those students matriculating at a Hawaii law school, who have not had mainland undergraduate educational experience, to attend one or several summer sessions at mainland institutions. The courses taken can be counted toward meeting Hawaii requirements, and the credits transferred toward completion of a Hawaii degree. Summer session enrollment suffers fewer constraints than regular term matriculation. At the most, this would appear to necessitate some form of a funding program to facilitate the education of those students whose resources would not otherwise permit mainland attendance. Of course, this assumes the Hawaii-based instruction will be a full three years for other students, which foregoes other advantages of the Ehrlich and Manning model.

Another device which would remove Hawaii from the horns of the dilemma would be to enter into a consortium with a mainland institution so that any education in Hawaii would be treated as but part of a total three-year program. The immediate advantages are obvious: assurance of mainland education for Hawaii students, a vehicle toward accreditation of the program (although not necessarily of a separate Hawaii law school), and the possible reduction of the total cost to the State of a comparable three-year program mounted **solely** in Hawaii. The last is somewhat problematical, as an institution with which consortium arrangements are made would want its costs of education, over those borne by the students' tuition, to be met through supplementary payments from Hawaii. (Here see discussion under the financial "facilitating" model with regard to WICHE, supra, pp. 74-75.) The other advantages of such consortium extend beyond education of Hawaii students on the mainland, and could lead to temporary exchanges of faculty and the furnishing of counsel by the more experienced partner.

There are a number of formidable administrative and policy problems associated with any such consortium. Hawaii at best would be the junior partner, for if this were not so, it would probably signify joinder with a mainland law school of sufficiently nondistinguished character as to augur a relatively unpromising future for the arrangement. As junior partner, Hawaii would enjoy lesser weight in deciding basic consortium policy, and would find itself yielding to the major institution's overriding needs. The extent of Hawaii's monetary commitment would have to be negotiated and would be considerable, although probably less than the cost of comparable training in Hawaii,

due to the economies of size and utilization of existent plant which could be gained in the mainland institution. Thus a consortium agreement remains an untried but logically feasible alternative. When a willing mainland institution is found, any arrangements made would have to be entered into realistically with full knowledge of the offsets to the benefits gained.

6. The "Integrated" Model.

Thorstein Veblen once wrote that "law schools belong in the modern university no more than a school of fencing or dancing" (Veblen, 1918: 211). While instruction of candidates to the Bar no longer includes learning to dance, sing, and "to exercise themselves in every kind of harmonics" (Woodard, 1968: 715, n. 60), Veblen was not referring to this earlier training in the Inns of Court. Rather, he was alluding to the law's orientation to vocationalism, so that while the law school was physically located on the campus, it was removed from the university's functions of scientific inquiry and scholarship. American legal education did not start out on this course, and it was only by following the example set by the Harvard school that the law school's curriculum was confined to vocationally technical subjects. Fairly recently, the relationship between the law and the social sciences has been reaffirmed, and introduction of materials from other disciplines into law courses has heralded the interdisciplinary approach to the study of law (Broderick, 1967; Modern Trends, 1964: 724ff). What yet remains, however, is the law school apart, rather than the law school an integral part of the university.

At the entering level, a few schools today permit the obtaining of multiple academic credentials under a combined degree program. For example, at the University of Idaho, joint programs with the College of Letters and Science and also the College of Business and Economics facilitate the earning of bachelor degrees in these colleges on the completion of the freshman law year. At the terminal end of legal training, joint programs offered by the Stanford Law School and the Departments of Economics and Political Science allow students to pursue both professional law degrees and advanced degrees in Economics or Political Science, completing the total requisite course work in less time than would be necessary for each, taken separately. All of these forms of joinder might appropriately be made applicable to a law school established in Hawaii. Such efforts at dove-tailing programs represent movement toward articulating the law school with the rest of the university, but of themselves do not constitute integration.

Similarly, an ever increasing interest in the social sciences has come to characterize the law curriculum. Professors not professionally trained in the law are permanently on staff of some law schools, and the teaching of courses in law schools by visiting faculty who are members of other disciplines has become almost commonplace. To a limited extent, credit for courses taken outside of the law school is now counted toward the earning of a law degree. In reverse order, law faculty will be found conducting courses on law-related subjects, sometimes jointly with colleagues from other disciplines, in classes scheduled outside of the law school's curriculum. However, here again the law school yet remains removed, concatenated but not merged with the university.

An "integrated" law school would go beyond the formal joinder of degrees, joint listing of courses, and occasional borrowing of faculties. The long divorce of legal and liberal education, under the influence of Story at Harvard (Arno, 1960: 846), would be reversed. The study of law in all of its aspects would be reintegrated into the university's concern for providing a liberal education. Professorships in law would now also be found outside of a college of law. The totality of this general education in law would be the university's "legal program", and the "law school" be identified as only that portion focusing on the professional preparation for the practice of the law. No longer would law be treated as though a specialty primarily reserved for the law school.[80]

The standard university curriculum today only nibbles at the subject of law, partially through historical survey, and mainly through political science and sociological analysis. Law in its technical manifestations is found as courses of business law in colleges of business administration, forensic medicine for the future doctor, and in other vocational pursuits where some specialized knowledge of law promises to have a utilitarian value. The development of an understanding of the field of law and legal institutions, the whole centrality of law to modern society is only barely treated. "Law is not part of the liberal-arts experience of most undergraduates, and many observers are concerned about the long-run implications of a generation of college alumni with shallow conceptions of the law and the

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[80]This distinguishes the "integrated" model from Manning's "Stage Three Model," for in the latter the law school remains a distinctive, "expansive organism," and it reaches out into the university community (Manning, 1969: 12).

legal system and considerable distrust of it." (Ehrlich and Headrick, 1970: 456).

Under the "integrated" model[81] law and society would become the core of the university's legal education program. Some of its effort would be directed toward the undergraduate. "The potential...is almost infinite: courses dealing with property, the family, the criminal sanction, the [U.S.] Supreme Court, sociology of law, the legal profession, law and development, legal history, and civil and socialist law. Equally attractive might be courses that take up current legal-policy issues in, for instance, federal taxation, labor management relations, consumer protection, urban political participation, welfare legislation, and international relations." (Ibid., 466). Courses on law for the undergraduate vocational constituencies--future journalists, foreign service personnel, dental assistants, nurses--and the entire range of para-legal pursuits would fit here. At the graduate level, too, there would be more intensive interest in law as a subject for academic inquiry as distinct from vocational preparation as a lawyer. Faculty professionally trained for the practice of law and other faculty members with diverse disciplinary preparation and mutual interests in the study and teaching of the role of law would participate both in joint courses and severally in the carrying on of this legal education program.

For the undergraduate students enrolled at the university desirous of professional training in the law, there would need be no sharp break between college and law school (Pincus, 1970: 42). By the time of their senior year they would be enrolled in a law major and have begun work in jurisprudence, the administration of criminal justice, and comparable other subjects. Courses in the last year of the major would simultaneously constitute the first year of law school preparation.[82] A B.A. degree in law would be granted at the end of the senior year. The second year of the law school would then be devoted

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[81]Much of the discussion on the "integrated" model is based on a memorandum from Professor Harry V. Ball (Ball, 1970).

[82]For the student completing a non-law B.A. either at the University of Hawaii or on the mainland and then entering the professional law training track, the first-year program would be individually scheduled to remove deficiencies in his preparation. By the second year he would be fully in step with those who entered the program as undergraduates and received a B.A. degree in law.

to the basic professional courses--contracts, torts, criminal law, etc.--that teach the fundamental relationships established and regulated by law. This year of the law school would concentrate on general informational indoctrination and skill development, while the third year through pedagogical methods such as clinical training would aim at greater specialization in subject matter and procedural coverage, and sharpening of lawyer skills. The awarding of the J.D. degree would certify to the completion of a three-year professional program and the student's readiness to sit for the Bar examination. Should resources in the form of qualified faculty and research library permit, additional professional work in law could be undertaken, leading to an advanced law degree.

On parallel but distinctive tracks, at the undergraduate level some students may enroll in para-legal programs of varying length. At the graduate level, a specially designed schedule of courses may lead to a non-professional master's degree in law for students who desire advanced legal education but have no intention to practice, corresponding to the two-year Master of Jurisprudence introduced at Stanford. Joint programs linking law with related disciplines may permit students to pursue graduate degrees in both.

The "integrated" model would have particular relevance to a school such as the University of Hawaii, since it would call for employment of limited resources to multiple purposes. Faculty professionally trained in the law, while primarily concerned with the second and third-year vocational law degree track, would also teach other undergraduate and graduate courses. In turn, to the extent vocational legal education includes allied skill training--as counseling--or subject matter and methodological knowledge found elsewhere on campus--as behavioral study of the judicial system--the services of cooperating faculty would be enlisted. Some of the introductory courses in the professional study of law would be attended by undergraduates not aiming toward the practice of law, as would also advanced courses by graduate students similarly outside of the professional law track. While electives would continue to be offered, those not central to professional practice would be integrated with the rest of the university's liberal arts offerings.

In place of a small group of around 15 law professors, identified with a Warren and Mearns model law school, or an even smaller number under the Ehrlich and Manning interim "third-year" model, the "integrated" model would have a faculty of probably double the size, fully or partially concerned with legal education. Within this open-ended law faculty, the vocational preparation of the lawyer would be the particular focus of the professional law professor, symbolized by his

appointment to the "law school". Others would hold appointments in the departments of their respective disciplines. Since the professional program would not be restricted to those courses offered by the professors of the law school, and this particularly so in the first year, correspondingly fewer professional law faculty would be necessary to staff the three-year vocational program. Personnel savings would permit the financing of general law courses to be added to the university's undergraduate and graduate liberal arts offerings. Other law school costs would appear unaffected--eventually 250 professional law track students could be expected, a law library would still be requisite, and a law building to house the "integrated" model would remain necessary.[83]

In not following the standard design for a law school, and being "structured for creativity" (Hutchins, 1968: 6), the "integrated" model represents an untried experiment. While permitting the Hawaii student to complete a professional law program in six years of university study, it would not offer the same attraction to anyone who has graduated from a mainland undergraduate institution. It would weaken the law students' sense of distinctiveness which contributes to the building of the lawyers' professional ethos. Accreditation is in no way assured, and undoubtedly would be withheld until the competence of the professional legal training could be fully demonstrated. Like all of the other law school "models" which have been considered, the "integrated" model suffers from its own disadvantages. Unique to the "integrated" model, while holding to the same major goal of training Island residents for the professional practice of the law, it would educate many more university students than just prospective lawyers to the importance and dimensions of law in society.

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[83] But now the law school building would be extensively used by more than the students in the professional law training program.

Appendix

ESTIMATED ENROLLMENT OF
WARREN AND MEARNS' TYPE LAW SCHOOL
FIRST SIX YEARS' OPERATION

	1st Year	2nd Year	3rd Year	4th Year	5th Year	6th Year
First-Year Class	65	75	86	97	97	97
Second-Year Class	--	49	60	70	81	81
Third-Year Class	--	--	41	52	62	72
Total No. of Students	65	124	187	219	240	250

Note: Attrition rates are those contained in Appendix D of the Warren and Mearns' report, p. A20.

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