

9-11-1974

# Georgia Bar Special Committee Report on Establishment

Georgia State University College of Law

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REPORT  
OF  
SPECIAL COMMITTEE OF THE STATE BAR  
ON THE  
ESTABLISHMENT OF A LAW SCHOOL  
AT  
GEORGIA STATE UNIVERSITY

The Committee, composed of the elected members of the Executive Committee of the State Bar with the President-Elect serving as Chairman, was charged by the President with reviewing the proposal regarding the establishment of a law school at Georgia State University and recommending an appropriate response on behalf of the State Bar of Georgia. The Committee has met, reviewed considerable data, and makes this its report to the Board of Governors.

The Committee recommends unanimously that the Board of Governors approve this report and authorize the Committee on behalf of the State Bar to transmit it to the Board of Regents, to appear before the Board of Regents, and to unite their attention to the materials set forth in this report. For this reason the report is couched below as a report and recommendation of the State Bar of Georgia to the Board of Regents.

W. Stell Huie, Chairman  
Harold G. Clarke  
Robert W. Crenshaw, Jr.  
Robert L. Foreman, Jr.  
Wilton D. Harrington  
A. Sidney Parker

Timothy S. Perry, Reporter

THE RECOMMENDATION OF THE STATE BAR OF GEORGIA TO THE  
STATE BOARD OF REGENTS REGARDING THE ESTABLISHMENT OF  
A LAW SCHOOL AT GEORGIA STATE UNIVERSITY

For what assistance it may be to the Board of Regents in reaching a decision, we are pleased to submit herewith this report in the hope that it will be received in the spirit in which it is tendered, to-wit: that the public is best served through the efficient and effective delivery of legal services by highly qualified and ethical members of the legal profession whose independence of judgment is unfettered.

At the outset, it should be made clear that the State Bar of Georgia would not purport to tell the Board of Regents what its final judgment should be regarding this matter. It is important, however, for the Board of Regents to have before it while making its decisions the fullest possible presentation of facts.

In order to assemble and present such facts, a special committee of the State Bar has looked carefully into some of the factors which should be considered by the Board of Regents in reaching their decision. In addition, the special committee has made some observations regarding the nature and direction of the proposed school, should one be built. The Board of Governors of the State Bar has approved and adopted this report.

Some Relevant Factors in Considering Whether to Found a New A.B.A.-  
Approved Law School in Georgia

Number of Applicants

It is easy enough to ascertain the precise number of applications received by any particular school, and such figures for the law schools of Emory University, Mercer University, and the University of Georgia (hereafter Emory, Mercer and University of Georgia) are shown in Table 1 below.

Table 1 - Number of Applications Received

|      | <u>Emory</u> <sup>1.</sup> | <u>Mercer</u> <sup>2.</sup> | <u>U. of Ga.</u> <sup>3.</sup> | <u>Total</u> |
|------|----------------------------|-----------------------------|--------------------------------|--------------|
| 1965 |                            |                             | 341                            |              |
| 1966 |                            |                             | 360                            |              |
| 1967 |                            |                             | 402                            |              |
| 1968 |                            |                             | 460 (319)                      |              |
| 1969 |                            |                             | 618 (386)                      |              |
| 1970 | 2,004                      |                             | 790 (518)                      |              |
| 1971 | 2,397                      |                             | 1,188 (647)                    |              |
| 1972 | 2,970                      |                             | 1,687 (857)                    |              |
| 1973 | 2,800                      |                             | 1,565 (776)                    |              |
| 1974 | 2,800 (est.)               |                             | 1,542 (834)                    |              |

Number of applications by Georgia residents is listed in parenthesis where available.

1. Data supplied by Martha Howard, Admissions Office. Data listed for each year includes applications for entering class of first year students.
2. Data supplied by
3. Data supplied by J. Ralph Beaird, Professor of Law to Mr. James D. Maddox, Esq. by letter of July 19, 1974 - 1974 data current to that date.

Many students apply to more than one law school. It is, therefore, quite difficult to ascertain the total number of individuals, each of whom has applied to a group of law schools, whether that group be the law schools of Georgia, of the Southeast, or of the nation as a whole. This difficulty is compounded when figures for a number of years are presented to establish a trend, if any. Some students may apply to law schools for several years running, a number of people take the Law School Admissions Test (LSAT) more than once, and some who take the LSAT do not apply to law school. Care must be taken to avoid overstating the number of applicants because of this potential for counting a single applicant numerous times.

The number of persons who take the LSAT is at least a starting point in estimating the number of persons applying to law schools in this country or some part of it. Table 2 presents this information.

Table 2 - LSAT Candidates by State of Residence

|             | <u>1966-68</u> | <u>1968-70</u> | <u>1970-72</u> |
|-------------|----------------|----------------|----------------|
| Alabama     | 891            | 1,120          | 1,617          |
| Arkansa     | 450            | 643            | 912            |
| Florida     | 2,648          | 3,732          | 5,854          |
| Georgia     | 1,277          | 1,624          | 2,292          |
| Kentucky    | 890            | 1,335          | 1,899          |
| Louisiana   | 1,551          | 1,903          | 2,374          |
| Maryland    | 1,775          | 2,425          | 4,213          |
| Mississippi | 554            | 730            | 963            |

|                |                 |                 |                 |
|----------------|-----------------|-----------------|-----------------|
| North Carolina | 1,273           | 1,792           | 2,685           |
| South Carolina | 709             | 857             | 1,369           |
| Tennessee      | 1,063           | 1,284           | 2,164           |
| Texas          | 3,884           | 5,304           | 7,582           |
| Virginia       | 1,860           | 2,620           | 3,963           |
| West Virginia  | 372             | 565             | 854             |
|                | 19,197          | 25,934          | 38,741          |
|                | (22.7% of U.S.) | (21.7% of U.S.) | (20.8% of U.S.) |
| United States  | 84,542          | 119,491         | 185,836         |

This material is taken from a report prepared by A. Kenneth Pye of Duke University for the Southern Regional Education Board. That report cites as its authority for these figures, Educational Testing Service, Law School Admission Test Statistical Summary 1960-1968; 1962-1970; 1964-1972.

Professor Millard H. Ruud has further refined the national figures on LSAT candidates as shown in Table 3 below.

Table 3  
Administrations of LSAT on National Basis

|      |          |
|------|----------|
| 1965 | 39,406   |
| 1966 | 44,905   |
| 1967 | 47,110   |
| 1968 | 49,756   |
| 1969 | 59,050   |
| 1970 | 74,092   |
| 1971 | 107,479  |
| 1972 | 119,694  |
| 1973 | 121,262  |
| 1974 | 135,000* |

This material is taken from a table contained in Professor Ruud's article in 60 A.B.A. Journal 182 (February, 1974). The LSAT candidate volume is given for the test year ending in the year stated. Thus, 121,262 administrations of the LSAT occurred in the test year July, 1972 through April, 1973.

\*This figure is an estimate made by Peter A. Winograd in a phone conversation August 2, 1974.

No information was available as to the precise number of Georgians who took the LSAT in any particular calendar year or testing year (July through April), but the material in Table 2 and Table 3 supports an estimate that between 1,200 and 1,400 Georgians took the LSAT in the most recent year (whether calendar year or testing year).

Peter A. Winograd, director of law programs of the Educational Testing Service, states in a recent article that 15% of the administrations of the LSAT, at least in the 1972 testing year, represent repeaters.<sup>1</sup>

Information on applicants is also supplied by the Law School Data Assembly Service (LSDAS) which was formed recently to assist the nation's law schools in gathering statistical data on applicants and, particularly, in determining grade point averages for their applicants. Registration with LSDAS is a required part of the application process to most A.B.A.-approved law schools. Though the LSDAS figures do

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<sup>1</sup>Peter A. Winograd "Law School Admissions: A Different View", 59 A.B.A. Journal 862 (August, 1973).

not include applications all A.B.A.-approved schools, at least they do not have some of the distortions reflected in the LSAT figures. An individual may apply to five law schools in one year but is registered only once with LSDAS for that year.

LSDAS had approximately 107,000 registrations for the year September, 1972 through August, 1973. LSDAS estimates it will have 112,000 registrations for the year September, 1973 through August, 1974.<sup>2</sup> It should be emphasized, however, that not all those who register with LSDAS complete the application process. In one year 20% of those registered with LSDAS never had reports issued to a law school.<sup>3</sup>

LSDAS figures are not available on a state-by-state basis.

On a national level, both the LSAT and LSDAS data indicate a rising number of applicants to A.B.A.-approved law schools though the rate of increase has slackened in the last two years. Peter Winograd's estimate of 85,000 persons having completed the application process for A.B.A.-approved law schools in a recent year is the best estimate currently available on a national level.<sup>4</sup>

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<sup>2</sup>Figures stated by Peter A. Winograd in phone call, August 2, 1974.

<sup>3</sup>Peter A. Winograd, "Law School Admissions: A Different View", 59 A.B.A. Journal 862 (August, 1973).

<sup>4</sup>Ibid.

Looking only at the applications received by Emory, Mercer, and University of Georgia, the number of applicants (disregarding the serious potential for counting a single applicant numerous times) has held steady or declined in the past few years (See Table 1). There is no reliable way to determine how many of these applicants are actually qualified to attend law school. The continued enrollment of approximately \_\_\_\_\_ students in Georgia law schools not approved by the A.B.A. demonstrates an additional number of potential applications not fully reflected in the LSAT and LSDAS figures.

The information available is insufficient to state what the number of Georgians applying for law school, either in Georgia or in other states, is. And though LSAT figures for Georgia indicate the number of Georgians applying to law school was probably going up from 1966 to 1972, we have no current LSAT figures for Georgia to confirm that the trend continues. The LSAT figures on a national level, nevertheless do show a considerable increase in administrations from 1973 to 1974, but this figure is an estimate only. In light of the leveling off of total applications to Emory, Mercer, and University of Georgia, there is reason to doubt that there is any substantial increase in applicants, whether or not Georgia residents, to be expected in the near future.

It should be noted that, according to Professor Beaird, at the level of applicants in recent years, between 125 and 200 Georgians "that could successfully complete Georgia's law program" are not admitted to the University of Georgia law school. It is difficult to say whether or not these Georgians apply to or are admitted to other A.B.A.-approved law schools.<sup>5</sup>

Of course, these figures from the past are, at best, an inadequate guide for projecting the future volume of applicants. The creation of a new law school could generate a new demand for enrollment, particularly if the new law school offered an academic program different from that currently available, such as part-time legal education or a degree program of evening classes. It is important, nevertheless, to realize that current available information does not indicate that Georgia or the nation face the massive increase in demand for law school positions which was so apparent in 1971 and 1972.

#### Priorities for Use of State Revenue

The public has a vital interest in ready access to adequate legal assistance by highly qualified and ethical attorneys. The State Bar is dedicated to this goal.

In considering the allocation of resources in this area, the Board should study a recent report on legal education in

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<sup>5</sup>Letter of Professor J. Ralph Beaird to Mr. James D. Maddox, Esq., dated July 19, 1974.

the Southeast undertaken by A. Kenneth Pye for the Southern Regional Education Board analyzing the public interest in expenditures of tax revenue to train additional lawyers. Mr. Pye focused on the argument that there is an unmet need for legal services and also on the number of qualified persons who wish to study law.

With regard to the first point, Mr. Pye states:

"The argument that more lawyers are required to meet the unmet need for legal services ignores several factors. The extent of the unmet need is unknown, and even if it is great, it is not primarily a shortage of lawyers but the distribution of legal services which causes the problem."

In short, Mr. Pye argues that the efficient delivery of legal services to the public may well be achieved more effectively by concentrating resources on devising and operating systems for providing legal services to the public rather than on training additional lawyers to function within the present system of delivering legal services. Mr. Pye argues further than to the extent there is an unmet need for legal services, it is as much a matter of poor distribution as it is a matter of too few lawyers. He concludes on this point as follows:

"Scarce resources will be better spent in making existing legal services available to more of the citizenry than by educating more lawyers without concern as to how the average citizen will benefit from an enlarged legal profession."

With regard to the demand by qualified applicants for facilities to train additional lawyers, Mr. Pye disagrees "that

facilities should be provided for all qualified individuals seeking to study law, unless simultaneously other actions are taken to insure that their talents will be available to those who need them." Mr. Pye compares the need for additional lawyers to other needs and concludes:

"It is difficult to understand why the expansion of legal education is more important than public kindergartens or health care for those who cannot afford doctors or hospitals, or for many other social problems. A general expansion of legal education to meet the demand by law school applicants should be resisted, not to provide protection for lawyers from competition, but to use available resources to meet more pressing needs."

Mr. Pye does not conclude, however, that no new law schools should be built in the Southeast in the immediate future. In particular, he notes that a law school offering classes in an evening division in major urban areas may constitute a special need justifying the allocation of resources.

#### Number of Student Positions Open In A.B.A.-Approved Law Schools

Enrollment in A.B.A.-approved law schools has more than doubled in the past decade. The enrollment continues to increase, but in the last year the rate of increase has tapered off. In 1972 the rate of increase was 7.6%; in 1973, it was 4.3%. The rate of increase for students seeking their first degree in law fell from 7.5% in 1972 to 3.8% in 1973. Nevertheless, the decline in the size of the first year class which

occurred in 1972 was reversed in 1973 with an increase of 4%.<sup>6</sup>

Table 4 presents this information.

| <u>Table 4</u>                                   |              |                   |
|--|--------------|-------------------|
| <u>Enrollment in A.B.A.-Approved Law Schools</u> |              |                   |
|  | <u>Total</u> | <u>First Year</u> |
| 1963   | 49,552       | 20,776            |
| 1964   | 54,265       | 22,753            |
| 1965   | 59,744       | 24,167            |
| 1966   | 62,556       | 24,077            |
| 1967   | 64,406       | 24,267            |
| 1968   | 62,779       | 23,652            |
| 1969   | 68,386       | 29,128            |
| 1970   | 82,499       | 34,713            |
| 1971   | 94,468       | 36,171            |
| 1972   | 101,707      | 35,131            |
| 1973   | 106,102      | 37,018            |

This material is taken from Millard H. Ruud, "That Burgeoning Law School Enrollment is Portia", 60 A.B.A. Journal 182 (February, 1974). The enrollment figures are as of October 1.

Until 1972, the response to the increased number of applicants to law school was primarily an expansion of existing facilities. As Professor Ruud states:

"In 1969, 1970, and 1971, the only accredited university that established a law school was Hofstra, which enrolled its first class in the fall of 1970. However, the past two years have witnessed a significant change. In the fall of 1972 Antioch School of Law and

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<sup>6</sup>Millard H. Ruud, "That Burgeoning Law School Enrollment is Portia", 60 A.B.A. Journal 182 (February 1974).

University of Puget Sound enrolled their first law classes. This past fall four accredited universities - Brigham Young University, Franklin Pierce College, University of Hawaii, and Southern Illinois University at Carbondale - enrolled their first law classes. And Western New England College, an accredited college that has for some years conducted an unapproved law program, established a full-time faculty and admitted its first full-time class.

The council of the American Bar Association Section of Legal Education and Admissions to the Bar will consider an unprecedented nine applications for provisional approval at its February, 1974, meeting. The University of Dayton and Nova University in Ft. Lauderdale, Florida, have announced intentions to enroll their first law classes in the fall of 1974. A number of other colleges and universities are giving serious consideration to establishing law schools."<sup>7</sup>

Only five of these nine applications for provisional approval were granted at the February meeting.<sup>8</sup>

This trend toward new law schools is partially explained by the fact that, for the first time, in the fall of 1973 there was not a single unfilled seat in the entering first year class of any A.B.A.-approved law school in the country.<sup>9</sup>

Within Georgia, Dean Edgar H. Wilson states that Mercer has embarked on an active campaign, approved by its Board of Trustees, virtually to double the enrollment in its law school program in the near future. The Board of Regents

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<sup>7</sup>Ibid, pp. 183-184.

<sup>8</sup>Charles D. Kelso, phone conversation August 1, 1974.

<sup>9</sup>Ruud, op. cit., p. 183.

may not previously have been aware of the likelihood and early target date of this expansion.

Within the last year, then, the last empty seats in the entering classes of this country's A.B.A.-approved law schools were filled. In Georgia, there have been few, if any, empty seats in an entering law school class at Emory, Mercer, or the University of Georgia for \_\_\_ years. The plan to expand Mercer's enrollment and the creation of five new A.B.A.-approved law schools will offer additional student positions.

#### The Public Demand for Legal Services

The Task Force on Professional Utilization of the American Bar Association unanimously adopted the following conclusions in 1972:

"CONCLUSIONS: The subject of the Task Force's inquiry is complex. It relates not only to diverse and novel developments peculiar to the legal profession but also to population and economic factors affecting the nation at large. Time limitations to which we were subject have been made impossible the full exploration and resolution of all considerations pertaining to the subject of professional utilization. Further study is required. Nevertheless, the Task Force unanimously reached the following conclusions:

1. There is no conclusive evidence to indicate that there are now or are likely to be in the foreseeable future more legally trained men and women than can be satisfactorily and productively employed.

2. The existence of a large pool of well-qualified, legally trained individuals constitutes a major opportunity and should be viewed as a significant national resource.

3. The organized bar shares the responsibility for finding ways to utilize this resource.

4. No limitation or restriction ought to be placed on the number of qualified individuals entering the legal profession by arbitrarily restricting the number of places in law schools or unnecessarily raising bar admission standards.

5. While the expansion of existing law school facilities and the creation of new facilities should be undertaken with caution so as not to dilute the quality of educational resources, if the demand for legal education continues at present or higher levels, facilities should be provided for all qualified individuals seeking to study law.

6. The organized bar and law schools should increase their efforts to provide legal education opportunities to members of minority groups and law schools should take precautions to assure that the great competition for admission to law school does not result in reducing opportunities for members of such groups.

7. The American Bar Association should encourage and assist the development of lawyer placement activity among state and local bar associations and law schools.

8. The American Bar Association as well as State and Local bar associations and law schools should inform the public that there may not be sufficient positions in the near term in some traditional fields of legal practice or in some geographical areas for all those who may seek such positions and further investigate and publicize the developing areas in traditional practice and otherwise which offer new opportunities."<sup>10</sup>

Recently, the U.S. Department of Labor increased its estimate of average annual openings for lawyers from 14,000 to 16,500 and explained the reasons for this increase as follows:

"Moderate employment rise due to the growth of legal action in such areas as consumer protection and the environment and the greater use of attorneys by low- and middle-income groups. Prospects for establishing a new practice probably will be best in small towns and growing suburban areas; most salaried positions will become available in urban areas. Keen competition for salaried positions."<sup>11</sup>

These figures should be compared to the number of persons admitted to the Bar in the past decade. Table 5 presents this information on a national level while Table 6 presents a membership analysis of the past decade for the State Bar.

Table 5

Law Degree and Admissions to the Bar

|      | <u>J.D. or LL.B.<br/>Awarded</u> | <u>New<br/>Admissions<br/>to the Bar</u> |
|------|----------------------------------|--|
| 1963 | 9,638                            | 10,788                                   |
| 1964 | 10,491                           | 12,023                                   |
| 1965 | 11,507                           | 13,109                                   |
| 1966 | 13,115                           | 14,644                                   |
| 1967 | 14,738                           | 16,007                                   |
| 1968 | 16,077                           | 17,764                                   |
| 1969 | 16,733                           | 19,123                                   |
| 1970 | 17,183                           | 17,922                                   |
| 1971 | 17,006                           | 20,485                                   |
| 1972 | 22,342                           | 25,086                                   |
| 1973 | 27,756                           |  |

J.D. or LL.B. degrees are those awarded by approved schools for the academic year ending in the year stated. Thus, 27,756 degrees

<sup>11</sup>U.S. Department of Labor, Occupational Outlook Quarterly, Summer, 1974, v. 18, no. 2, p. 9.

were awarded in the year beginning with the fall, 1972 term and ending with the summer, 1973 term. Total new admissions to the Bar are for the 1972 calendar year and include those admitted by office study, diploma privilege, and examination and study at an unapproved law school; the great bulk of those admitted were graduated from approved schools.

This material is taken from a table contained in Professor Ruud's article in 60 A.B.A. Journal 182 (February, 1974).

Table 6 - Membership Analysis of the State Bar of Georgia

| <u>Fiscal Year</u> | <u>Active</u> | <u>Inactive</u> | <u>Total</u> | <u>Net Increase</u> | <u>Passed Bar Exam</u> |
|--------------------|---------------|-----------------|--------------|---------------------|------------------------|
| 1964               | 4,272         | 498             | 4,770        |                     | 97                     |
| 1965               | 4,393         | 587             | 4,980        | 220                 | 206                    |
| 1966               | 4,501         | 717             | 5,218        | 238                 | 394                    |
| 1967               | 4,622         | 758             | 5,380        | 162                 | 179                    |
| 1968               | 4,794         | 787             | 5,581        | 201                 | 222                    |
| 1969               | 4,938         | 787             | 5,725        | 144                 | 261                    |
| 1970               | 5,166         | 817             | 5,980        | 265                 | 353                    |
| 1971               | 5,530         | 815             | 6,345        | 365                 | 401                    |
| 1972               | 5,890         | 810             | 6,700        | 355                 | 461                    |
| 1973               | 6,237         | 888             | 7,125        | 425                 | 554                    |
| 1974               | 7,137*        | 998*            | 8,125*       | 1,000*              | 1,084                  |

\*Estimated, pending audit

Material submitted by Mrs. Grant Williams, Executive Secretary, State Bar of Georgia.

Placement of law school graduates has become more difficult in recent years in the Southeast. Of the 206 graduates

of University of Georgia, 25 remained unplaced as of July 19, 1974. A recent survey of 17 southeastern law schools indicated that only 71% of the graduates were placed by the end of the academic year.<sup>12</sup>

The number of lawyers and the lawyer-population ratio for the U.S. and a number of southeastern states are shown in Table 7.

| Table 7   |                |                               |              |
|---|----------------|-------------------------------|--------------|
| <u>Lawyers, Population and Population-Lawyer Ratio, United States and South, 1970</u> |                |                               |              |
|   | <u>Lawyers</u> | <u>Population<br/>(000's)</u> | <u>Ratio</u> |
| United States   | 355,242        | 203,185                       | 572          |
| SREB States   | 82,872         | 58,933                        | 711          |
| South as a<br>Percent of<br>U. S.   | 23.3           | 29.0                          |              |
| Alabama   | 3,537          | 3,444                         | 974          |
| Arkansas  | 2,107          | 1,923                         | 913          |
| Florida   | 11,510         | 6,789                         | 590          |
| Georgia   | 6,140          | 4,590                         | 748          |
| Kentucky  | 3,875          | 3,219                         | 831          |
| Louisiana   | 5,502          | 3,643                         | 662          |
| Maryland  | 7,447          | 3,922                         | 527          |
| Mississippi   | 2,766          | 2,217                         | 802          |
| North Carolina  | 4,638          | 5,082                         | 1,095        |
| South Carolina  | 2,379          | 2,591                         | 1,089        |
| Tennessee   | 5,184          | 3,924                         | 757          |
| Texas   | 19,074         | 11,197                        | 587          |
| Virginia  | 6,893          | 4,648                         | 674          |
| West Virginia   | 1,820          | 1,744                         | 958          |

<sup>12</sup>Letter of Professor J. Ralph Beaird to Mr. James D. Maddox, Esq., dated July 19, 1974.

The future need for lawyers and for individuals with legal training who do not practice law is not susceptible of precise calculation. Nor could any forecast be the basis for recommendations without a thorough examination of the proper role lawyers should play in society and of the means for delivering adequate legal services to everyone who is in need of them.

Direction a New Facility Should Take if There is to be One  
An Evening Division

A recent study prepared for the Association of American Law Schools directed by Charles D. Kelso explores the nature of legal education offered at classes during the evening. The study concludes that such evening legal education, when undertaken with a commitment to adequate resources, has a continuing role to play in training lawyers.

The study made these findings:

The study has disclosed some considerations bearing on the future of evening legal education that run across all resource levels. It may be useful to deal with them here in the form of questions and findings believed supported by data gathered during the study.

1. Are evening students less likely than day students to become competent lawyers?

Findings: The drop out rate for evening students is higher than for day, and somewhat fewer evening students who graduate engage in any form of practice. To this extent, they are less likely to become lawyers. However, these statistics aside, admission standards that generate evening classes of capacity equal to day classes have been maintained at many multiple-division schools.

To the extent that becoming an able lawyer is thought to require a high level of research in law school and classroom creativity with respect to thoroughly prepared materials, evening students are less likely to become competent lawyers. However, if these criteria are not thought essential, there is little evidence that evening students cannot match day students of similar academic capacity in law school and in the practice when both are educated in the same school or in a school with comparable resources. Alumni concern about the competence of evening students appears directed primarily at graduates of unapproved schools and graduates of schools with less resources than the school attended by the evaluator.

2. Do evening students have such narrow vocational objectives that they will view the law as a business, rather than as a profession, and neglect the public service aspect of the profession?

Findings: More so than day students, evening students prefer practical instruction, teachers who have been or are in the practice, and instruction which has the flavor of current practice. More of the evening students resist pure Socratic instruction. However, this difference in viewpoint is much greater between students of high and low rank, and between students at "A" or "C" schools. It is also a dimension which seems to set off students who are actively involved in academic concerns from those who are more directly involved in the non-academic world.

As clinical instruction begins to infuse the law school world, even some of the better day students are beginning to prefer the full-time teachers who currently have practice-like contacts with the "real world". Statements by evening students during interviews with respect to the role of lawyers in society were as idealistic as those of day students in comparable class ranks at comparable schools.

3. Because of evening students' time limitations and the fatigue factor, are there programs for day students which simply cannot be given in the evening?

Finding: Certain clinical programs are more difficult to schedule for evening students. However, evenings and Saturdays are available for exploitation. The Study Director is not aware of a single program found successful in the day that has been tried in the evening and discontinued because it did not work there as well.

4. Are the evening programs needed to bring a greater diversity of persons into the legal profession?

Finding: Persons of low socio-economic status and persons with unusual educational and business backgrounds are more often found in evening programs. However, a larger total number of persons with low economic backgrounds enter the profession from day programs than evening. The answer to the question depends on a value judgment as to how important is diversity and opportunity. If evening programs were sharply cut back, so would diversity. How much is not clear.

For example, the big jump in black enrollment occurred in the day; not in the evening, as one might expect. It seems rather more that the evening programs are bringing into the profession a group of persons with durability and considerable drive to get ahead. Their total legal careers will be shorter by three years or so, and more of them will be on the edges of conventional law practice. However, these edges are becoming more indistinct. Age, like race and sex, may tend to become one of the suspect categories deserving equal protection.

5. What is the effect of an evening program on the teaching and scholarly productivity of faculty?

Finding: Comparing the publications of faculty members at "B" day schools and "B" multiple-division schools provides no basis for assuming that the evening program cuts down on faculty productivity. The most productive scholars are at "A" day schools. However, there is scant evidence that they would be less productive if occasionally they taught in the evening rather than in the day.

Only a few teachers were interviewed who said they had moved from a school with an evening division because they did not like to teach at night - couldn't go to sleep after classes, and things of that sort. Some deans said that recruiting an able man (or woman) to teach both day and evening means that a salary increase is needed to compete. However, we collected no solid data on this. It has not been the Study Director's experience, at Miami or Indianapolis, that evening teaching was a problem in faculty recruitment.

6. Does the existence of an evening division hamper a creative approach to the development of legal education?

Finding: In all but two schools visited by the Study Director where the dean and faculty had agreed that the role of the school should be enlarged from preparing practitioners to participating more actively in research and service functions, emphasizing thorough examination of newly developing fields of law, a judgment had already been made, or was in process, that the evening division should be phased out. The two exceptions were Connecticut and Denver. At Connecticut the faculty's experimental work in the problem method was to be tried in both divisions for five years. Dean Sacks has explained his reluctance to shut down the evening division until it is determined whether the school's high-level goals can be accomplished there as well as in the day. 1969 AALS Proceedings 106-113. At Denver, the dean (and presumably the faculty) views the experience of evening students as a useful window on the world. An evening division fits with institutional concern for the intersections between law and society. The Study Director saw no evidence that the faculty at Denver and Connecticut were any less creative than the faculty at the other schools.

However, the Study Director has an impression - nothing more - that creativity in multiple-division schools may have been hampered in some instances by an assumption that whatever exists in the day program must be made available to the evening students, and vice versa. No such requirement is contained in the ABA

standards or the AALS articles, and it does not seem required by any broad principle of sound educational policy. A school may be able to engage a particular specialist to teach part-time in the evening. It would be a shame if the school would refrain because the specialist could not also teach in the day. It would also be unfortunate if full-time day students could not arrange to take the course (at least if this did not create a space problem for the evening students).

One would hope that teaching evening students will challenge more professors to develop teaching materials which fit the time and interest characteristics of evening students. It could then be seen how those materials worked for day students. The present development of teaching materials operates almost exclusively in the other direction. This is but one of several opportunities for creativity that evening legal education affirmatively presents.

The Kelso Report presented a massive amount of data, some of which is contained in the following tables:

Table 8

Number and Type of Law Schools: 1971-72

|                   | Approved | Unapproved | Total |
|-------------------|----------|------------|-------|
| Day               | 92       | 0          | 92    |
| Multiple Division | 48       | 4          | 52    |
| Evening           | 5        | 30         | 35    |
|                   | 145      | 34         | 179   |

This table is based upon the 1971 ABA Review of Legal Education and other ABA records. In addition to the 8 unapproved evening schools which reported for the 1971 Review, ABA records indicate at least 22 other unapproved evening schools which did not report.

In this table, as elsewhere in the report, we have omitted the Judge Advocate General's School and the law schools in Puerto Rico.

Table 9

Percent and Number of Law Schools on the Approved List of the American Bar Association: 1927-1971

|      | Day             | Multiple-Division | Evening       |
|------|-----------------|-------------------|---------------|
| 1927 | 71% (59 of 83)  | 19% ( 5 of 27)    | 0% (0 of 75)  |
| 1937 | 92% (77 of 84)  | 51% (19 of 37)    | 0% (0 of 61)  |
| 1947 | 95% (76 of 79)  | 79% (30 of 38)    | 12% (5 of 42) |
| 1957 | 98% (83 of 85)  | 93% (38 of 41)    | 22% (7 of 32) |
| 1967 | 95% (86 of 91)  | 91% (42 of 46)    | 23% (7 of 31) |
| 1971 | 100% (92 of 92) | 92% (48 of 52)    | 14% (5 of 35) |

Table 10

Day and Evening Enrollment in All Schools

By Decade

|      | Day    | Evening | Percent Evening | Total  |
|------|--------|---------|-----------------|--------|
| 1950 | 36,298 | 16,377  | 31%             | 52,675 |
| 1960 | 28,738 | 14,957  | 34%             | 43,695 |
| 1970 | 64,540 | 21,488  | 25%             | 86,028 |
| 1971 | 76,055 | 21,238  | 22%             | 97,293 |

(Day on this chart includes Extended Morning or M classes, in ABA Review)

Table 11

Evening Enrollment in Approved and Unapproved Schools:

By Decade

| Year | Evening Enrollment In Approved Schools | Evening Enrollment In Unapproved Schools | Total Evening Enrollment | Percent of Total Day & Evening in Un-approved Schools |
|------|--|--|--------------------------|---|
| 1950 | 8,930 (55%)                            | 7,447 (45%)                              | 16,377                   | 17.6%   |
| 1960 | 12,086 (81%)                           | 2,871 (19%)                              | 14,957                   | 7.5%  |
| 1970 | 18,133 (84%)                           | 3,355 (16%)                              | 21,488                   | 4.6%  |
| 1971 | 19,099 (90%)                           | 2,139 (10%)                              | 21,238                   | 2.9%  |

Table 12

1971 Enrollment for First Degree in ABA Approved Schools

| Type of School    | Number of Schools | Type of Student | Number of Students | Total Day or Evening Students |
|-------------------|-------------------|-----------------|--------------------|-------------------------------|
| Day               | 92                | Day             | 50,428 (56%)       | 75,193 (83.5%)                |
|                   |                   | Day             | 24,765 (28%)       |                               |
| Multiple-Division | 43                | Evening         | 12,575 (14%)       | 14,828 (16.5%)                |
| Evening           | 5                 | Evening         | 2,253 ( 2%)        |                               |
|                   | 145               |                 | 90,021             | 90,021 (100%)                 |

Table 13

Presence or Absence in 1971 of ABA Approved School  
With Evening Program in the 30 Largest Cities  
Of the United States

| Cities with an approved evening program: |                           | Cities without an approved evening program: |                       |
|--|---------------------------|---|-----------------------|
| <u>Rank</u>                              | <u>City</u>               | <u>Rank</u>                                 | <u>City</u>           |
| 1  | New York, New York        | 8   | Dallas, Texas         |
| 2  | Chicago, Illinois         | 12  | Milwaukee, Wisconsin  |
| 3  | Los Angeles, California   | 20  | Phoenix, Arizona      |
| 4  | Philadelphia, Pa.         | 22  | Seattle, Washington   |
| 5  | Detroit, Michigan         | 23  | Jacksonville, Florida |
| 6  | Houston, Texas            | 28  | Buffalo, New York     |
| 7  | Baltimore, Maryland       | 30  | Nashville, Tennessee  |
| 9  | Washington, D. C.         |   |                       |
| 10                                       | Cleveland, Ohio           |   |                       |
| 11                                       | Indianapolis, Indiana     |   |                       |
| 13                                       | San Francisco, California |   |                       |
| 14                                       | San Diego, California     |   |                       |
| 15                                       | San Antonio, Texas        |   |                       |
| 16                                       | Boston, Massachusetts     |   |                       |
| 17                                       | Memphis, Tennessee        |   |                       |
| 18                                       | St. Louis, Missouri       |   |                       |
| 19                                       | New Orleans, Louisiana    |   |                       |
| 21                                       | Columbus, Ohio            |   |                       |
| 24                                       | Pittsburgh, Pa.           |   |                       |
| 25                                       | Denver, Colorado          |   |                       |
| 26                                       | Kansas City, Missouri     |   |                       |
| 27                                       | Atlanta, Georgia          |   |                       |
| 29                                       | Cincinnati, Ohio          |   |                       |

Table 14

Metropolitan Areas Within Which Are ABA Approved  
Schools That Have an Evening Program

| Standard Metropolitan<br>Statistical Area | 1970 |            |
|---|------|------------|
|   | Rank | Population |
| New York, New York                        | 1    | 11,528,649 |
| Los Angeles-Long Beach, Calif.            | 2    | 7,032,075  |
| Chicago, Illinois                         | 3    | 6,978,947  |
| Philadelphia, Pa.                         | 4    | 4,817,914  |
| Detroit, Michigan                         | 5    | 4,199,931  |
| San Francisco-Oakland, Calif.             | 6    | 3,109,519  |
| Washington, D.C.-Md.-Va.                  | 7    | 2,861,123  |
| Boston, Massachusetts                     | 8    | 2,753,700  |
| Pittsburgh, Pennsylvania                  | 9    | 2,401,245  |
| St. Louis, Missouri-Illinois              | 10   | 2,363,017  |
| Baltimore, Maryland                       | 11   | 2,070,670  |
| Cleveland, Ohio                           | 12   | 2,054,194  |

|                              |     |           |
|------------------------------|-----|-----------|
| Houston, Texas               | 13  | 1,985,031 |
| Newark, New Jersey           | 14  | 1,855,556 |
| Minneapolis-St. Paul, Minn.  | 15  | 1,813,647 |
| Atlanta, Georgia             | 20  | 1,390,164 |
| Cincinnati, Ohio             | 21  | 1,334,911 |
| San Diego, California        | 23  | 1,357,854 |
| Buffalo, New York            | 24  | 1,349,211 |
| Miami, Florida               | 25  | 1,267,792 |
| Kansas City, Missouri-Kansas | 26  | 1,256,649 |
| Denver, Colorado             | 27  | 1,227,529 |
| Indianapolis, Indiana        | 29  | 1,109,832 |
| New Orleans, Louisiana       | 30  | 1,046,470 |
| Portland, Oregon-Washington  | 33  | 1,000,129 |
| Columbus, Ohio               | 35  | 916,228   |
| San Antonio, Texas           | 38  | 834,914   |
| Louisville, Kentucky-Indiana | 40  | 826,553   |
| Sacramento, California       | 41  | 800,592   |
| Memphis, Tennessee-Arkansas  | 42  | 770,120   |
| Toledo, Ohio-Michigan        | 46  | 692,571   |
| Akron, Ohio                  | 48  | 679,239   |
| Hartford, Connecticut        | 49  | 653,291   |
| Oklahoma City, Oklahoma      | 50  | 640,839   |
| Tulsa, Oklahoma              | 63  | 475,991   |
| Spokane, Washington          | 103 | 287,437   |

77,953,384

These findings should be viewed in the context of the phase-out of the evening division at Emory. A report by Dean Ben F. Johnson to the Board of Regents, dated June 28, 1972 discusses, in part, the experience at Emory.

Certainly, if a new facility is to offer evening legal education, a thorough review of the A.A.L.S. study and of the experience at Emory would be essential for responsible planning. In addition, consultation with New Jersey state officials and with representatives of the various law schools in New Jersey would be advisable since a proposal for state supported part-time legal education has generated considerable discussion in the last six months. Alternatives for an evening division not requiring a new facility should be considered. These

alternatives might include a cooperative effort of the present law schools to provide such a program in Atlanta.

If a decision is made to create a new facility, it should offer a permanent evening division offering high quality legal education. The evening division should be an integral part of the school, not merely a starting phase.

#### Recertification and Specialization

In some other states, the organized bar has instituted a program of periodic recertification of lawyers. Currently a joint committee of the State Bar of Georgia and the Institute for Continuing Legal Education is investigating the possibility of such a program in Georgia. If recertification is instituted, facilities for continuing legal education will be needed. A new facility could offer some assistance in that undertaking in coordination with the Institute for Continuing Legal Education, the State Bar, and the existing law schools.

Even in the absence of a recertification program, courses in special areas of the practice and coordinated with the Institute for Continuing Legal Education could be beneficial to members of the bar seeking to increase their expertise in an area.

#### Quality Legal Education

Certainly, any new law school should have as its goal the providing of a quality legal education. It should be given

the resources necessary to meet that goal, but these resources should not be provided by reducing the commitment to quality education of the existing law schools in Georgia.

The people of Georgia can be justifiably proud of the A.B.A.-approved law schools in this state. The quality of the existing law schools must not be diluted by diverting the resources necessary to continue and improve their programs into the creation of a new facility.

## Summary

### Some Relevant Factors in Considering Whether to Found a New A.B.A.-Approved Law School in Georgia

#### Number of Applicants

Though it is difficult to determine the actual number of applicants to any group of law schools, whether statewide or nationwide, the number of applicants is increasing. In the past year and a half, however, the rate of this increase in applicants has slackened. This slackening has been reflected in applications to law schools in Georgia.

#### Priorities for Use of State Revenue

To the extent public need for legal services remains unfilled, it may be as much a matter of poor distribution as it is a matter of too few lawyers. In deciding whether to allocate state resources to train additional lawyers, consideration should be given to other competing needs for those state resources.

#### Number of Student Positions Open in A.B.A.-Approved Law Schools

The nation's A.B.A.-approved law schools are functioning at full capacity. Not a single position in last fall's entering law school class in any A.B.A.-approved law school was unfilled. No significant number of positions in the entering classes at

Emory, Mercer, and University of Georgia have remained unfilled for \_\_ years. Mercer now proposes virtually to double its enrollment in the very near future.

This report has not attempted to set standards of qualification which would justify admission to an A.B.A.-approved law school. Though it is not possible to determine how many "qualified applicants" (however that term is defined) to law school fail to receive any acceptance, Professor J. Ralph Beard estimates that as many as 125-200 Georgians "that could successfully complete Georgia's law program" who apply to University of Georgia are not accepted there. We do not have information showing whether or not these Georgians are accepted at other law schools.

#### The Public Demand for Legal Services

On a national level, the number of persons graduating from law school and the number of persons admitted to the bar exceed the estimated average annual openings for lawyers. The A.B.A. Task Force report on professional utilization concluded, among other things, as follows:

"No limitation or restriction ought to be placed on the number of qualified individuals entering the legal profession by arbitrarily restricting the number of places in law schools or unnecessarily raising bar admission standards."

"While the expansion of existing law school facilities and the creation of new facilities should be undertaken with caution so as not to dilute the quality of

educational resources, if the demand for legal education continues at present or higher levels, facilities should be provided for all qualified individuals seeking to study law."

In allocating state resources, A. Kenneth Pye has observed that this excess argues for use of resources in areas other than the education of additional lawyers:

"It [this report] does disagree with the conclusion [of the A.B.A. Task Force] that facilities should be provided for all qualified individuals seeking to study law, unless simultaneously other actions are taken to insure that their talents will be available to those who need them. Scarce resources will be better spent in making existing legal services available to more of the citizenry than by educating more lawyers without concern as to how the average citizen will benefit from an enlarged legal profession."

#### Direction a New Facility Should Take if There is to be One

##### An Evening Division

If a decision is made to found a new law school, that law school should include a permanent evening division offering high quality legal education. A thorough review of the Kelso report, the experience at Emory, and the current debate in New Jersey would be essential for a responsible decision on this potential role for a new school.

##### Recertification and Specialization

The new facility should stand ready to cooperate in any future programs for recertification or specialization.

### Quality Legal Education

Finally, it must be stressed that no undertaking of this nature should be attempted without a commitment to the highest quality education possible at the new facility without diluting the high quality of the existing law schools. Georgia does not need poorly trained lawyers. We have not reviewed the cost of beginning a new facility or of expanding present facilities, and that cost may well be related to the educational goals of the facility. In any event, whatever those goals may be and whatever the cost, only a fully funded program should be considered.