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THE PROBLEM OF PAROCHIALISM IN LEGAL EDUCATION

PAUL T. WANGERIN*

INTRODUCTION

Anyone who regularly attends conferences sponsored by the Association of American Law Schools ("AALS"), and anyone who regularly reads articles about legal education that appear in the *Journal of Legal Education* or in other law journals, knows that most sessions of such conferences and most such articles implicitly suggest that legal education is a completely self-contained universe. In other words, the speakers at these conferences and the writers of these articles as a general rule make no references whatsoever to ideas about education from *outside of the field of law*. For example, countless legal educators speak and write every year about teaching students various "thinking" skills.¹ Yet, almost none of these commentators mention the existence of a huge body of literature *outside of the field of law* that deals generally with the process of thinking or specifically with the teaching of thinking.² Or consider a recent symposium on

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1. For attempts to describe these particular thinking skills, see STEVEN J. BURTON, AN INTRODUCTION TO LAW AND LEGAL REASONING (1985); FRANCES K. ZEMANS & VICTOR G. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION (1981); H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397 (1980); Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985); Paul T. Wangerin, *Skills Training in "Legal Analysis": A Systematic Approach*, 40 U. MIAMI L. REV. 409 (1986).

2. For discussions of the thinking processes, see generally ESSAYS ON THE INTELLECT (Frances R. Link ed., 1985); RAYMOND S. NICKERSON ET AL., THE TEACHING OF THINKING (1985); THINKING: THE SECOND INTERNATIONAL CONFERENCE (David N. Perkins et al. eds., 1987); LAUREN B. RESNICK & LEOPOLD E. KLOFFER, TOWARD THE THINKING CURRICULUM: CURRENT COGNITIVE RESEARCH (1989); Robert J. Sternberg & Janet E. Davidson, *A Four-Prong Model for Intellectual Skills Development*, J. RES. & DEV. EDUC., Spring 1989, at 22-28; PRACTICAL INTELLIGENCE: NATURE AND ORIGINS OF COMPETENCE IN THE EVERYDAY WORLD (Robert J. Sternberg & Richard K. Wagner eds., 1986). For discussions of "critical" thinking, see TEACHING THINKING SKILLS (Joan B. Baron & Robert J. Sternberg eds., 1987); FRANCIS W.

the teaching of legal ethics, a symposium first presented at an AALS conference and then published in the *Journal of Legal Education*.³ None of the participants in this symposium, all of whom were legal educators, acknowledged the existence of, let alone relied upon, ideas about the teaching of professional ethics outside of the field of law.⁴ And consider, again simply by way of example, another recent symposium, this one on Curriculum Developments in law schools. (This symposium also was initially presented at an AALS meeting and then published in the *Journal of Legal Education*.)⁵ Once again, none of the participants in this symposium referred to a vast body of literature outside of the field of law on the development and evaluation of curriculums in higher education institutions.⁶ Finally, consider Philip C. Kissam's extraordinary recent piece on law school examinations, a piece which surely is one of the most provocative articles to appear in recent years on legal education.⁷ Kissam makes no mention whatsoever of a huge general literature on exams and grading in higher education institutions other than law schools.⁸

DAUER, *CRITICAL THINKING: AN INTRODUCTION TO REASONING* (1989); PAUL D. EGGEN & DONALD P. KAUCHAK, *STRATEGIES FOR TEACHERS: TEACHING CRITICAL THINKING SKILLS* (2d ed. 1988); BRUCE WALLER, *CRITICAL THINKING: CONSIDER THE VERDICT* (1988); JOHN E. McPECK, *CRITICAL THINKING AND EDUCATION* (1981).

3. *Teaching Legal Ethics: A Symposium*, 41 J. LEGAL EDUC. 1 (1991).

4. For an elaborate discussion of ethical development in law students, and for many references to the general literature of ethics teaching, i.e., the non-law literature, see Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237 (1988) [hereinafter Wangerin, *Objective, Multiplistic, and Relative Truth*].

5. *Curriculum Developments: A Symposium*, 39 J. LEGAL EDUC. 469 (1989).

6. Perhaps the best starting point in connection with this literature is ROBERT J. MENGES & B. CLAUDE MATHIS, *KEY RESOURCES IN TEACHING, LEARNING, CURRICULUM AND FACULTY DEVELOPMENT: A GUIDE TO THE HIGHER EDUCATION LITERATURE* (1988).

7. Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433 (1989).

8. Admittedly, some exceptions to the phenomena just described indeed do exist. Several years ago, for example, the AALS sponsored a program on "academic support programs" which featured a number of people who discussed ideas from outside of the world of legal education itself. Further, some commentators on legal education have even discussed outsiders' ideas at considerable length. See, e.g., Richard L. Abel, *Evaluating Evaluations: How Should Law Schools Judge Teaching*, 40 J. LEGAL EDUC. 407 (1990); William G. Hollingsworth, *Controlling Post Tenure Scholarship: A Brave New World Beckons?*, 41 J. LEGAL EDUC. 141 (1991). In addition, Wangerin has relied heavily on interdisciplinary ideas in a number of articles about legal education. See, e.g., Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771 (1989); Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471 (1988) [hereinafter Wangerin, *Learning Strategies*]; Wangerin, *Objective, Multiplistic and Relative Truth*, *supra* note 4. Finally, other recent commentators on legal education issues have also sometimes made brief references to education works from outside of the law school community in connection with discussions of legal education. See, e.g., MICHAEL S. JOSEPHSON, *LEARNING AND EVALUATION IN LAW SCHOOL* (1984).

The following analysis addresses the phenomenon just described, a phenomenon that herein will be called "parochialism about education." The analysis has two parts. Part I, which lays the foundation for everything that follows, suggests that the parochialism about education that so many legal educators display actually rests on three related facts: (1) professions and academic disciplines, by their very nature, are parochial; (2) professions and academic disciplines, by their very nature, are particularly parochial about issues involving professional education itself; and, (3) powerful or prestigious disciplines and professions are exceptionally disdainful of ideas from the discipline of education itself. Part II of the analysis moves to attempts to counter that parochialism. It suggests that a "common core" of thinking skills exists that is used by students and practitioners in virtually all professions and academic disciplines. Because that is so, this part suggests, at least some of the teaching techniques that teachers outside of the law schools use to teach thinking skills can "transfer" to the law schools.

I. THE PAROCHIALISM OF PROFESSIONALS

Historians and sociologists who study the nature and development of professions now generally believe that professions come into being, and then continue to operate, in a more or less standard way.⁹ The process starts, these students of the professions believe, when groups of people who are doing a particular kind of work begin to believe, and then to tell outsiders, that the work they do involves unique and exclusive knowledge and skills. These groups of people then begin to create a highly technical language for use in connection with their work, a language that eventually begins to reinforce these groups' claims of unique and exclusive knowledge and skills. Furthermore, these people then attempt to create highly restrictive schooling and licensing requirements which ultimately allow this group of people to be the sole judges of who will and who will not be allowed in the future to do the kind of work they do.

Some students of the professions also believe that established professions must constantly struggle to protect and extend their own "jurisdiction," i.e., the area of work and knowledge over which they

9. Eliot Friedson, *Are Professions Necessary?*, in *THE PROFESSIONS IN AMERICAN HISTORY* 3 (Nathan O. Hatch ed., 1988); MARGOLIS S. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977); *THE FORMATION OF PROFESSIONS* (Rolf Torstendahl & Michael Burrage eds., 1990).

claim exclusive control.¹⁰ Professions do this, these students of the professions believe, in two ways. First, professions constantly try to repel attacks on their own jurisdiction. Thus, for example, doctors constantly try to prohibit registered nurses or psychologists from doing “medical” procedures. Medical procedures, the doctors claim, are within their exclusive jurisdiction. Likewise, registered nurses and psychologists constantly try to stop, respectively, licensed practical nurses and social workers from doing certain kinds of work. Second, professions, at least the strongly established ones, constantly attempt to extend their own jurisdiction by attacking the jurisdiction of other professions. The attacking professions usually do this by claiming that some peripheral aspect of another profession’s work should not be under the exclusive control of that other profession. Rather, that work should be shared with the attacking profession, or even given entirely to the attacking profession. The professions of medicine and dentistry, for example, are currently engaged in a furious jurisdictional battle regarding “oral surgery.” Both of these powerful professions wish either to share jurisdiction over this kind of work, or, better, seize control of it entirely.

Note now a critically important corollary point. Professions themselves often divide themselves up into subgroups. Individual lawyers, for example, often classify themselves with subgroups of that profession, as “litigators” or tax attorneys or corporate attorneys or estate planners. Likewise, doctors often classify themselves into subgroups within their profession, as surgeons or anesthesiologists or internists or pathologists or psychiatrists. Not surprisingly, these subgroups then often act in ways that closely mimic the acts of the profession itself. Subgroups, for example, often claim to possess unique and exclusive knowledge and skills; knowledge and skills that other members of the profession itself do not possess. Furthermore, subgroups like this often create a highly technical jargon. In addition, such subgroups often try to prohibit outsiders from doing the work that they do, even if those outsiders are members of the larger profession itself. Etc., etc., etc.

The short of it is this: Though all of the members of a particular profession share certain interests, and though all of them will together act to protect their profession from attacks launched by outsiders, professions are not monolithic entities unscathed by internal battles.

10. ANDREW D. ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* (1988).

Interestingly, students of the history of higher education suggest that similar patterns of development and ongoing practice exist in connection with academic disciplines in the higher education institutions. Students of the history of higher education now often suggest that academic disciplines come into existence when groups of academics within the higher education community begin to claim that they alone possess unique knowledge or skills in connection with a specific subject.¹¹

Then these academics create a highly technical language to use in connection with their work, a language which ultimately reinforces these groups' claims of unique and exclusive knowledge and skills.¹² Furthermore, students of the disciplines in higher education now believe that groups of like-minded academics often create highly restrictive schooling requirements, requirements that ultimately allow these groups themselves to be the sole judge of who will and who will not in the future be allowed to be part of a particular academic discipline.

Not surprisingly, experts on the historical development of academic disciplines also believe that academic disciplines seek both to protect and expand their own jurisdiction.¹³ Burton R. Clark notes that academic disciplines spread themselves "imperialistically far beyond initial boundaries."¹⁴ Furthermore, disciplines that are low in

11. See Tony Becher, *The Disciplinary Shaping of the Profession*, in *THE ACADEMIC PROFESSION: NATIONAL, DISCIPLINARY AND INSTITUTIONAL SETTINGS* 271 (B. Clark ed., 1987) [hereinafter Becher, *Disciplinary Shaping*]; TONY BECHER, *ACADEMIC TRIBES AND TERRITORIES: INTELLECTUAL INQUIRY AND THE CULTURE OF DISCIPLINES* (1989) [hereinafter BECHER, *ACADEMIC TRIBES*]; Tony Becher & Ludwig Huber, *Disciplinary Cultures*, 25 *EUR. J. EDUC.* 235 (1990); BURTON R. CLARK, *THE ACADEMIC LIFE: SMALL WORLDS, DIFFERENT WORLDS* (1987); Brian Cohen, *Skills, Professional Education, and the Disabling University*, 10 *STUD. HIGHER EDUC.* 175 (1985); George D. Kuh & Edward J. Whitt, *Subcultures*, in *THE INVISIBLE TAPESTRY: CULTURE IN AMERICAN COLLEGES AND UNIVERSITIES* 75 (1988); WILLIAM D. SCHAEFER, *EDUCATION WITHOUT COMPROMISE: FROM CHAOS TO COHERENCE IN HIGHER EDUCATION* (1990); Sheila Slaughter & Edward T. Silva, *Service and the Dynamics of Developing Fields*, 54 *J. HIGHER EDUC.* 481 (1983); Bruce Wilshire, *Professionalism as Purification Ritual: Alienation and Disintegration in the University*, 61 *J. HIGHER EDUC.* 280 (1990); ROBERT G. WILSON & JERRY G. GAFF, *COLLEGE PROFESSORS AND THEIR IMPACT ON STUDENTS* (1975).

12. Wayne C. Booth, *Presidential Address: Arts and Scandals 1982*, 98 *PUBLICATIONS MODERN LANGUAGE ASS'N* 312 (1983); LYNNE V. CHENEY, *HUMANITIES IN AMERICA: A REPORT TO THE PRESIDENT, THE CONGRESS AND THE AMERICAN PEOPLE* (1988); GIANDOMENICO MAJONE, *EVIDENCE, ARGUMENTATION, AND PERSUASION IN THE POLICY PROCESS* 64 (1989); Wilshire, *supra* note 11.

13. See generally Becher, *Disciplinary Shaping*, *supra* note 11; BECHER, *ACADEMIC TRIBES*, *supra* note 11; Becher & Huber, *supra* note 11; CLARK, *supra* note 11; Kuh & Whitt, *supra* note 11.

14. CLARK, *supra* note 11, at 30.

prestige constantly strive to increase their prestige, often at the expense of other disciplines.¹⁵

Note now again a crucial point. Just as professions are not monolithic entities, academic disciplines are not monolithic entities. Thus, academic disciplines, like professions, tend to break up into subgroups, subgroups which then imitate the actions of the parent group.¹⁶ Subgroups may create their own language and their own educational requirements. Furthermore, they may form exclusive societies, societies to which it alone controls access. Finally, and most significantly, subgroups in academic disciplines then constantly engage in battle with outsiders, including outsiders who may themselves be part of the overall academic discipline.

An additional thing about the activities of subgroups in academic disciplines must now be described, something significantly different from what was seen in connection with the activities of subgroups in professions.¹⁷ Subgroups in one academic discipline sometimes enter into alliances with subgroups in other academic disciplines. (This process, incidentally, is called "interdisciplinary" analysis.¹⁸) These subgroups, it seems, share greater interests with each other than with the parent disciplines. For example, a subgroup of people in the discipline of biology who study the behavior of animals might enter into an alliance with a subgroup of people in the discipline of psychology who also study the behavior of animals. When this occurs, these allied subgroups begin jointly to imitate the actions of academic disciplines and professions. These allied subgroups, for example, begin to create a specialized language and specialized societies. And they begin to create stringent educational requirements. Etc., etc., etc. Most importantly, these allied subgroups begin engaging in jurisdictional battles with all outsiders, including now even outsiders who are part of the parent disciplines. Ultimately, these allied subgroups may succeed in creating their own academic discipline; a discipline carved out of the former jurisdiction of the parent disciplines.

15. Becher, *Disciplinary Shaping*, *supra* note 11; BECHER, *ACADEMIC TRIBES*, *supra* note 11; Campbell, *Physical Education in British Universities: The Search for Status*, 15 *STUD. HIGHER EDUC.* 331 (1990); Slaughter & Silva, *supra* note 11, at 481-99.

16. Becher, *Disciplinary Shaping*, *supra* note 11; BECHER, *ACADEMIC TRIBES*, *supra* note 11.

17. *Id.*

18. Peter Monaghan, *'Two Cultures' of Science and Literature No Longer Considered Disparate Fields*, *CHRON. HIGHER EDUC.*, Nov. 7, 1990, at A5, A8.

The foregoing comments about the possibility of inter-disciplinary work at the margins of the professions and the academic disciplines brings this analysis to the issue of education itself. As noted earlier, one of the most important things that professions and academic disciplines do involves the education of newcomers. Obviously, that education must teach newcomers particular skills and particular bodies of knowledge. More importantly, however, that education must instill in newcomers the notion of uniqueness. Newcomers must be taught supposedly unique skills and bodies of knowledge. Further, and more importantly, newcomers must be acculturated to generally accepted professional and academic norms. These facts suggest, in turn, that the people charged with responsibility for educating newcomers to the professions and academic disciplines will be unlikely to look outside of their own fields for ideas about education itself. This is so, of course, because teachers who look outside of a particular profession or academic discipline for ideas about teaching itself convey to their students the idea that the profession or academic discipline at issue is *not* a repository of unique skills and knowledge. But, the idea of such uniqueness is at the heart of education for these professions and disciplines.

For the reasons just noted, teachers in the professions and academic disciplines are unlikely to look *anywhere* outside of their own profession or discipline for ideas about education itself. For additional reasons, however, these teachers are *particularly* unlikely to look to the discipline of education itself for such ideas.¹⁹

As noted earlier, professions and academic disciplines constantly seek to increase their own power and prestige. Thus, to the extent that members of these professions and disciplines mix with outsiders at all, they mix primarily with outsiders who are perceived of as strong and powerful. For several reasons, however, that generally leaves out people in the discipline of education itself. First, the discipline of education is generally considered a “soft-applied” discipline²⁰ or an

19. Feinman & Feldman, *supra* note 1; Marc S. Nelson, M.D. et al., *How Medical School Faculty Regard Educational Research and Make Pedagogical Decisions*, 65 *ACAD. MED.* 122, 122-26 (1990); Wangerin, *Learning Strategies*, *supra* note 8.

20. See Becher, *Disciplinary Shaping*, *supra* note 11; BECHER, *ACADEMIC TRIBES*, *supra* note 11. Becher interviewed more than a hundred university faculty members in an attempt to determine how academic disciplines come into existence and the relationship between members of different disciplines in the overall university. A clear hierarchy of disciplines exists, he suggests, at the top of which are “Hard-Pure” disciplines like physics and chemistry and at the bottom of which are “Soft-Applied” disciplines like education. Becher, ultimately, is very blunt:

“immature” subject.²¹ Soft-applied or immature disciplines generally rank low in the overall university hierarchy²² and must constantly struggle for legitimacy.²³ Second, the people who teach in the discipline of education for the most part receive less in salary than the people who teach in the substantive disciplines, and far less than people who teach in the major professional schools.²⁴ Low salaries in the

Education, among other soft-applied areas, because it draws in an eclectic way on the soft-pure knowledge of the humanities and pure social sciences, has an unstable intellectual base and is significantly less prestigious than any of the hard-applied disciplines [such as engineering], let alone the hard-pure ones. Its command of resources is weak, because education research is often individualistic and inexpensive and also because it is relatively difficult, in a field divided by doctrinal arguments, to achieve consensus on the merit of grant proposals.

Becher, *Disciplinary Shaping*, *supra* note 11, at 288.

The present writer's own anecdotal experience also supports this point. A number of years ago, the present writer, a law school teacher, sent a work combining ideas from the world of education itself with ideas from the world of legal education to an extremely well-known law school professor at one of the most elite universities in this country; a university, incidentally, that is the home to some of the country's most prominent education researchers. The recipient law school professor, whose sister, it seems, is a grade school teacher with whom the professor had regularly discussed educational issues, responded by flatly stating in a letter to this writer that he believed that legal educators simply could learn nothing at all about legal education from people in the field of education itself. Something similar happened to the present writer a few years earlier. During a plenary session of a conference on law school teaching, this writer suggested, from the floor, that perhaps the people in the room could learn something about the topic being discussed from the general education literature. A hushed silence followed. Several people then spoke, each clearly reflecting the views of most of the people in the room. The present writer's suggestion, they noted, was preposterous. People in the schools of education, they continued, were for the most part there only because they were not smart enough to get into the schools of the professions or the substantive academic disciplines.

It hardly need be said, of course, that the foregoing anecdotal observations regarding the views of legal educators do not, by themselves, prove that people in the substantive academic disciplines and the professions have particular disdain for the work of people in the field of education. Thus, the conclusions suggested by these things can be, and probably will be, readily rejected, particularly by people in the field of education itself. Nobody likes to have their own ox gored. Nevertheless, anyone who has regularly and candidly talked to a cross-section of college teachers in the substantive academic disciplines or to a cross-section of teachers in the professional schools knows that the evidence provided herein about the low repute of the field of education, skimpy though that evidence might be, presents an accurate picture.

21. CLARK, *supra* note 11, at 42. For a comment about the low status of the discipline of education, see also Frederick S. Weaver, *Academic Disciplines and Undergraduate Liberal Arts Education*, 67 LIBERAL EDUC. 151 (1981). For an interesting general analysis of the history of the teaching profession itself, an analysis that repeatedly returns to status issues, see JURGEN HERBST, *AND SADLY TEACH: TEACHER EDUCATION AND PROFESSIONALIZATION IN AMERICAN CULTURE* (1989).

22. Becher, *Disciplinary Shaping*, *supra* note 11.

23. CLARK, *supra* note 11, at 95; Edward R. Ducharme & Russell M. Agne, *Professors of Education: Uneasy Residents of Academia*, in *THE PROFESSORS OF TEACHING: AN INQUIRY* 67 (Richard Wisniewski & Edward R. Ducharme eds., 1989); Richard Wisniewski & Edward R. Ducharme, *Where We Stand*, in *THE PROFESSORS OF TEACHING: AN INQUIRY*, *supra*, at 147.

24. KATHLEEN P. BENNETT & MARGARET D. LECOMPTÉ, *HOW SCHOOLS WORK: A SOCIOLOGICAL ANALYSIS OF EDUCATION* 128-29 (1990).

university, of course, translate into low power and low prestige. Third, people who specialize in education, and who attend graduate school in that field, are often perceived to be people who could not gain admission to the schools of the prestige professions. Regardless of whether this is true or not, it clearly is a widely held belief. Fourth, and finally, the discipline of education has traditionally been perceived of as a "feminized" discipline. And, obviously, a feminized discipline is a weak discipline.²⁵

It should now be clear that the parochialism about education displayed by so many legal educators is not something that can easily be displaced. Since people who are members of professions and substantive academic disciplines must, of necessity, claim that they possess exclusive and unique skills and knowledge, such people almost necessarily display at least some parochialism. Further, since teachers in the professions and substantive disciplines must inculcate in newcomers these notions of unique and exclusive knowledge and skills, such teachers are particularly likely to be parochial when it comes to education issues. Finally, since the substantive academic discipline of education itself is generally perceived of as a weak discipline, people from powerful professions and disciplines, either teachers or practitioners, are unlikely to look to it for help.²⁶

II. A "COMMON CORE" OF SKILLS

It hardly needs to be said that legal educators who are asked to defend themselves in connection with the parochialism just described do not generally mention things like the nature and status of professions and academic disciplines. Rather, such educators usually respond to questions in this context with relatively straight-forward justifications. For example, some legal educators confronted with questions about their parochialism argue that the "substance" addressed in law school classes differs profoundly from the substance

25. *Id.* at 125-129. Maybe the field of education is identified with feminine traits because so many women go into this field. Or this identification may occur because the teaching profession seems to be a "nurturing" as opposed to an "analytic" profession. For a discussion of some of these issues see Wangerin, *Objective, Multiplistic, and Relative Truth*, *supra* note 4, at 1237, 1292.

26. Interestingly, at least one attempt exists at movement in the opposite direction, i.e., with educators generally seeking to learn from people in the professional schools. Roger Soder, *Studying the Education of Educators: What We Can Learn from Other Professions*, 70 *PHI DELTA KAPPAN* 299 (1988). Soder argues that a tremendous overlap exists between the training programs of different professions. Regrettably, however, Soder does not develop any of the ideas discussed herein.

taught in classes outside of the law schools. Thus, these educators insist, legal educators can learn nothing of value from people who teach outside of the law schools. Further, some legal educators believe that the education that they received in law school was far and away the best education that they received anywhere. Thus, these people insist, the evidence shows that legal educators already know more about good teaching than anybody outside of the law schools and thus need not look to outsiders for assistance. In addition, some of these educators insist that profound differences exist between the institutional cultures of undergraduate schools and the graduate and professional schools collectively, and between the many kinds of professional and graduate level schools individually.²⁷ These differences, they argue, make it impossible to transfer teaching ideas from other parts of the university to the law schools. Differences between students themselves at different kinds of educational institutions, another set of arguments suggests, also prohibits transfer of educational techniques from outside of the law schools into those schools.²⁸ Finally, it is sometimes said that various long established aspects of the teaching process itself at the law schools makes it impossible for law school teachers to adopt teaching techniques from other parts of the university. For example, use of the "case method" of instruction in law school classes seems to preclude use of teaching techniques from outside of the law school community.

None of the foregoing justifications for the parochialism of legal educators survive even the briefest analysis. Admittedly, differences in the substantive materials taught in the different kinds of educational institutions surely do exist. But, many legal educators bring

27. Professional schools, for example, usually do not rely on the individualized faculty-student "mentoring" process that is an essential element of graduate education. Indeed, in the professional schools much academic work by students is done in very large classes. Furthermore, the professional school curriculum is better articulated and defined than is the curriculum in graduate schools generally. In other words, most students at most professional schools in the same field take mostly the same courses whereas most students in graduate school, even most students in the same graduate program at the same graduate school, take completely different courses. Further, student activities in the professional schools as well as the curriculums in those schools are strongly influenced by pertinent professional organizations, the American Bar Association, for example, and the American Medical Association. These professional organizations, much more so than academic groups involved with graduate education generally, help set standards for professional school performance and help define that education.

28. To a certain extent, of course, this is true. Graduate and professional school students as a group almost always are significantly older than undergraduate students. In addition, and perhaps more significantly, the students in the graduate and professional schools as a group almost always are considerably smarter than the students at undergraduate institutions as a group, and considerably better trained in terms of basic academic skills.

non-law substantive materials into their classes. And that seems to work.²⁹ The “best education” defense also fails, if only because the informal evidence for it almost certainly rests on biased observation and because the formal evidence that exists on this issue goes the other way.³⁰

In addition, even if it is assumed that the teaching that takes place in law schools actually is better than the teaching that takes place in non-law schools—and this is, of course, a very, very large assumption—only fools would insist that legal educators can learn nothing at all about teaching and learning from anybody outside of the law schools. Some teachers outside of the law schools clearly are better than others. Finally, even if *no* teachers outside of the law schools are as good as teachers in the law schools, legal educators can still learn from outsiders. Skilled people, after all, can and often do learn at least some things from unskilled people.

29. Many legal educators now fill their classroom discussions with ideas from many fields other than law, from the fields, for example, of economics, literary criticism, social psychology and the like. Further, most journals in the field of law now regularly publish, and often seem *exclusively* to publish, articles that have a distinct interdisciplinary flavor. These facts clearly demonstrate that most legal educators do not view the substantive differences that exist between things taught in law schools and things taught elsewhere in the university as an insurmountable hurdle to good learning in law school.

The substantive differences justification fails because it rests, at least in part, on an unstated assumption that is unsupported by either common sense or empirical evidence. The unstated assumption, of course, is that the substantive material taught in law school is much, much more difficult than the substantive material taught in other parts of the university. Thus, goes the standard reasoning, teaching methods that may work well in connection with the teaching of substantive ideas in other parts of the university almost certainly will not work in the law schools. As soon as this unstated assumption is stated, its invalidity is obvious. The substantive material studied in law school may in fact be more difficult than the substantive material studied in some parts of the university. But, it surely is no more difficult than the substantive material studied in some undergraduate programs—Astrophysics, French Literary Criticism, Statistical Analysis—and in many graduate level programs. No matter what any lawyer may say about the substantive difficulty of Tort law, for example, or Conflicts, no reasonable person could say that those substantive bodies of information are more difficult than, say, Brain Physiology, Fluid Mechanics, or Quantitative Business Methods. Thus, a “difficulty” objection to the use in the law schools of ideas about teaching from other parts of the university simply collapses.

30. The people who teach in law schools are, with only rare exceptions, people who were themselves tremendously successful as students in law school, much more successful, that is, than most of their classmates. (The old saying—C students become lawyers; B students become judges; and A students become professors—carries with it a certain amount of truth.) These people’s beliefs about the quality of the teaching that occurs in law school, therefore, almost certainly is at least in part a function of their own personal success as students in law school. Poor students in law school might well have a very, very different view about the quality of teaching in those institutions. Further, empirical research done outside of the field of law suggests that teachers who rely principally on their own substantive education as a model for their teaching tend not to be as good teachers as teachers who study the process of education itself. See P.L. GROSSMAN, *THE MAKING OF A TEACHER* (1990).

Nor do the other justifications for parochialism survive the just described analysis. Admittedly again, differences between institutional cultures and between students themselves in different kinds of institutions surely do exist. But surely those differences cannot *totally* preclude the transfer of teaching techniques from one part of the university to another. *Some* teaching techniques still can transfer. Further, differences that supposedly exist in connection with long established teaching methods between the law schools and other parts of the university perhaps are not as great as they are generally thought. The “case method” of instruction, for example, actually is a method of instruction that originally was borrowed from science classes in the general university.³¹

Regrettably, one justification for the parochialism of legal educators when it comes to educational issues, a justification not yet mentioned, cannot so easily be dismissed. This one involves claims that the “skills” that law students and lawyers use are completely different

31. As Wangerin has demonstrated in *Learning Strategies for Law Students*, almost all legal educators know that Christopher Columbus Langdell invented the case method in the late 19th century for use in his Contracts classes at Harvard Law School. Wangerin, *Learning Strategies*, *supra* note 8, at 525. In addition, almost all legal educators know that this method of instruction requires students to learn about legal ideas and principles by reading actual appellate court opinions rather than by reading legal treatises or textbooks. What few legal educators know, however, is that the law school case method of instruction actually originated outside of the law school context.

Until about the middle of the 19th century, most students in higher education institutions in the United States, whether such institutions were undergraduate institutions or the then-incipient law schools, principally learned the substance of the disciplines they studied by reading treatises and textbooks and by listening to lectures. Charles Eliot disapproved of that approach. Eliot believed that students learn best when they actively participate in learning activities, particularly when they participate in such activities in laboratories. Eventually, Eliot published a college laboratory manual. Eliot's students then used this manual to help them learn principles of and skills related to inorganic chemistry while working in the laboratory with actual raw materials and actual raw data.

Eliot became the president of Harvard University in 1870. Shortly thereafter, he appointed Langdell to be the Dean at Harvard's law school. Not surprisingly, Langdell and Eliot shared ideas about teaching and learning. Langdell, a lawyer, believed, as did Eliot, a chemist, that students learn better in the laboratory than in the classroom. They learn better, in short, by working with raw data and raw materials than by reading books and listening to lectures. Langdell then came up with what Robert Stevens has called the only real intellectual contribution that lawyers have made to legal education in the last 125 years. First, Langdell concluded that appellate court decisions addressing contract law issues are themselves raw data. Then, logically, he collected this raw data about contract law into a book, a laboratory manual of the law so to speak. Finally, Langdell insisted that his students learn the rules of contract law in exactly the same way that Eliot insisted that his students learn the principles of inorganic chemistry. Langdell's students learned, in short, by studying the raw data about the law that he supplied to them and not by studying treatises or by listening to lectures. Langdell called this method of instruction the case method.

from the skills used by students in other parts of the university and professionals who are not lawyers. Since the skills involved are so different, goes the argument, techniques for teaching those skills simply cannot transfer from outside of the law community into the law schools.

A. LEARNING SKILLS

Law students are bombarded, literally from the day that they arrive at school, with statements about the fact that they must learn a whole new set of learning skills to succeed in school. The wholly new learning skill of “case briefing” must be learned, they are told, as must wholly new skills connected with the preparation of “outlines.” Wholly new skills of “analysis” must be learned, goes to the deluge of comments, as must wholly new skills of “synthesis.” The foregoing analysis suggests, of course, that newcomers to law school receive this bombardment of “wholly new” messages in significant part because such messages work very well at inculcating in newcomers the notion of uniqueness and exclusiveness of the profession of law. Thus, newcomers to the law schools probably would be bombarded with these wholly new messages even if the learning skills actually used in law school were very similar to, if not identical to, the learning skills used in other parts of the university.

In fact, this is exactly the case. As Paul T. Wangerin has demonstrated in a lengthy paper on “learning strategies” for law students, most of the classroom and studying skills that students use to achieve success in law school are very similar to the classroom and studying skills that students in other parts of the university use to achieve success.³²

Consider in this context just one learning skill, the much maligned (but much practiced) skill of “memorization.” “I do not want students to memorize rules,” countless law teachers endlessly opine. “I want students to learn how to think.” Fortunately, most law students ignore the advice implicit in these statements and thus spend a substantial part of their studying time memorizing rules. They do this, in turn, for a simple reason. Most law school teachers, including almost all of the teachers who make statements like the ones just quoted, give closed book, issue-spotting essay exams. As Kissam has clearly noted, however, such exams can only be answered successfully

32. Wangerin, *Learning Strategies*, *supra* note 8, at 479-516.

by students who have memorized a vast amount of information about rules.³³ Admittedly, memorization of information *by itself* generally will not bring success to law students on closed book, issue-spotting exams.³⁴ Nevertheless, the memorization of such information is a *pre-requisite* to success on such exams.³⁵

33. Kissam, *supra* note 7, at 458. Closed book, issue-spotting exams require students to do two things, both of which depend upon the previous memorization of large amounts of information about rules of law. First, students must “spot” legal issues in a complex set of facts. Students can spot particular legal issues in a set of facts, however, only if the students know the rules of law that, when applied to a particular fact or occurrence, generate such an issue. In other words, if the students do not know the rules, they cannot spot the issues. Second, on such exams students must “apply” the pertinent rules to the facts at issue. If the students do not know the rules, however, they certainly cannot apply those rules to factual situations.

Consider the following exam question, a question that could well be presented in a Contracts course or a Sales course.

Harry, the owner of a prominent hot dog stand, agrees during one of his regular phone conversations with Bob, who is his regular supplier of buns, that he, Harry, will buy 6,000 packages of Bob's special order “Hot [Cross] Buns” for a forthcoming church social. Harry is the president of the Alter Guild at the church. Bob agrees to set the price at \$1 / package, a price lower than the normal price, because this is a church event. Later, Bob sends the following note to Harry: “Don't forget to pick up the buns.” Harry does not respond to this note. Before the delivery date arrives, the price of buns plummets and Harry goes out and buys them from Bill, another supplier of buns. Bob then sues Harry and Harry defends by asserting the statute of frauds. Please discuss all issues presented by this lawsuit.

Law students must have memorized an enormous number of rules of law to answer this question in any kind of acceptable way. Obviously, for example, students who wish to answer this question well must have memorized the rule that contracts involving the sale of goods worth more than \$5,000 generally will not be enforceable unless memorialized by a written document signed by the party to be bound—in this case Bob. Further, students who hope to answer this question well must have memorized the rules that create different exceptions to the general statute of frauds rule just stated, namely, rules involving (1) specially manufactured goods, (2) reliance on previous oral dealings, and (3) letters of confirmation. Further, students who hope to answer this question well must have memorized a number of important rules about each of those exceptions. For example, students will not be able to address the letter-of-confirmation issue adequately unless they have memorized rules (1) stating that letters of confirmation work only if “merchants” are on both sides of the transaction, (2) indicating that someone can be a merchant in some contexts but a non-merchant in other contexts, and (3) defining merchants. In addition, students will not get top credit for discussions of this letter-of-confirmation issue well if they have not memorized the fact that at least some people think that letters of confirmation will be effective only if they are absolutely unambiguous in meaning.

34. *But see* William Perry, *Examsmanship*, 5 HIGHER EDUC. BULL. 133 (1977). Perry recounts the exploits of a Harvard undergraduate who wrote final exam papers without taking the actual courses involved and got A-'s, while many students who took the courses got C's.

35. An interesting technique exists, incidentally, for bursting the bubbles of professors who opine that they are teaching skills rather than substance and that memorization of information is not important. When such professors make such statements, listeners can quickly ask, preferably with a perfectly innocent face, whether the speaker could take a few moments to help think through a complex legal problem involving some incredibly obscure body of law, a body of law that the speaker knows nothing about. The speaker will then indignantly state that he cannot solve such a problem because he knows nothing about that body of law. The listener can then

Interestingly, the common sense wisdom of the point just made about the memorization of information has in recent years been confirmed by the work of people who study the process of thinking itself and by people who study the differences between “experts” and “novices.” Until recently, most researchers believed that thinking is essentially a generic kind of activity, something that can be done interchangeably in any number of different contexts. Further, until recently, most researchers thought that the principal difference between experts and novices was that experts possessed certain skills and that novices did not. Many researchers now believe, however, that quality of thinking may be directly related to the amount of “domain specific knowledge” that individual thinkers possess. In other words, the more information that people possess about a particular topic, the better they think in connection with that topic. Further, many of these researchers now believe that the principal difference between experts and novices involves the different amounts of informational knowledge that people in the different groups possess.³⁶

If in fact the foregoing analysis is correct, suggesting as it does that memorization of information may well be a very important part of legal education, then, clearly, teaching techniques that help students memorize important information in parts of the university other than the law school should “transfer” over to the law school. For example, assume that a group of medical school teachers has developed a successful technique for teaching students how to remember various important lists of nerves or muscles or bones. Assume further that this group of teachers has published a little paper on this topic in the journal *Academic Medicine*. There no longer should be any doubt that law school teachers could well be able to use these same techniques to help students learn how to remember the “elements” of various torts, or the steps that must be taken, and in which order, in connection with a certain procedural issue. Likewise, assume that graduate business educators have developed a number of techniques that allow them to use complex hypothetical “cases” to convey large amounts of important information. (“Cases” in the business schools, incidentally, are called “problems” in the law schools.) Further,

opine that knowledge of information, according to a well-respected law school teacher, is not important when it comes to the solving of complex legal problems.

36. For discussions of the thinking processes, see generally *ESSAYS ON THE INTELLECT*, *supra* note 2; *NICKERSON ET AL.*, *supra* note 2; *THINKING: THE SECOND INTERNATIONAL CONFERENCE*, *supra* note 2; *RESNICK & KOPFER*, *supra* note 2; Sternberg & Davidson, *supra* note 2, at 22-28; *PRACTICAL INTELLIGENCE: NATURE AND ORIGINS OF COMPETENCE IN THE EVERYDAY WORLD*, *supra* note 2.

assume that these teachers have published a short piece about their ideas in some journal in the business field. Again, there should no longer be any doubt that law school teachers—at least law school teachers who use problems rather than appellate court opinions—should be able to use these business school teaching techniques (called, incidentally, the “case method”) in the law school.

Recall now that this discussion of the interdisciplinary nature of the learning skill of memorization serves herein only as a representative example of learning skills generally. Thus, the foregoing discussion must also be read to suggest that the learning skill of, say, “reading,” is of an interdisciplinary nature, as is the learning skill of, say, “review.” But if that is true, and it almost certainly is, then educational techniques for facilitating the use of those learning skills also probably should transfer from one kind of educational institution to another. If, for example, teachers in the graduate business schools have developed techniques that help students comprehend complex reading assignments and remember the salient points therein in that kind of school, then those reading improvement techniques probably can also be used in law schools. Likewise, if medical educators have developed systematic review techniques that they regularly teach their students, then legal educators almost certainly should consider teaching those techniques to law students.

The foregoing references to medical education, in turn, require brief mention of the GPEP report, a report on medical education produced in 1984 by a prestigious panel of medical educators.³⁷ This report contains, essentially, a blanket condemnation of then-current medical education and a call for major changes. This report also contains, however, ideas that suggest that the learning skills that should be used in the medical schools are exactly the same as the learning skills that should be used in, among other places, the law schools. Consider, for example, the six recommendations of the subgroup of the GPEP panel on learning skills:

- (1) Evidence of effective past use of self-directed learning skills should be an important criterion for a student’s admission to medical school.
- (2) Medical faculties should review their curricula to identify the best ways to emphasize acquisition or strengthening of students’ learning skills.
- (3) Medical schools should encourage faculty members to use various approaches to instruction that

37. *Physicians for the Twenty First Century: Report of the Project Panel on the General Professional Education of the Physician and College Preparation for Medicine*, J. ACAD. MED., Nov. 1984, pt. 2, at 1 (Merrill T. McCord ed.) [hereinafter *GPEP*].

develop students' learning skills and attitudes. (4) Medical faculties should assess the extent to which their institutions offer opportunities for employing electronic data processing technology for fostering learning skills. (5) Medical faculties should use evaluation methods that assess and reward students' learning and problem-solving skills. (6) The Association of American Medical Colleges should undertake a carefully planned and evaluated project assessing the value and potential impact of different approaches to fostering learning skills in students.³⁸

It hardly need be said that many legal educators believe that reforms in legal education should accomplish exactly the same kinds of things. Indeed, it is probably safe to say that a slight change in wording in the foregoing recommendations would allow those recommendations to be used directly in connection with the reports of groups of people charged with reforming legal education.

One final point must yet be made in this context. No one could reasonably suggest that *all* of the learning skills that law students use are the same as the learning skills used in other parts of the university. Law students, for example, can only achieve real success in school if they master complex library research skills, research skills that differ substantially from the research skills used in other disciplines. Further, though students in all parts of the university will achieve success in school only if they learn how to anticipate and respond to counter arguments, success for law students is particularly dependent on mastery of skills in that context. Thus, obviously, not all of the skills that law students use in school are skills that law teachers can teach using methods developed in other parts of the university. But that is not the point made herein. The point is *not* that law teachers can learn everything that they need to know about teaching from other parts of the university. Rather, the point is that law teachers can learn some things about teaching from other parts of the university.

B. THINKING SKILLS GENERALLY

A point closely related to the previous one can also be made in connection with the thinking skills that lawyers use when they practice law. Obviously, *some* of the practice skills that lawyers use are different from *some* of the practice skills that people in other professions or academic disciplines use.³⁹ Lawyers, for example, do not have to

38. *Id.* at 151.

39. References to discussions of the thinking skills that lawyers use were listed earlier. A number of people have studied the thinking skills used by people in various professions other

learn how to do brain surgery. Further, again by way of example, lawyers do not have to learn how to calculate load requirements for large structures. That point, however, is not the end of it. If *some* of the thinking skills that lawyers use in connection with their practice activities are comparable to *some* of the thinking skills that people in other professions and disciplines use when they practice their professions or disciplines, then some teaching techniques that teachers use in other parts of the university to teach practice skills should transfer to the law schools. The critical question therefore is this: Are at least some of the practice skills, involving thinking skills used by lawyers, comparable to at least some of the practice skills that people in other professions and academic disciplines use?

As noted earlier herein, in connection with the discussion of the skill of memorization, most researchers now believe that formal thinking skills cannot be completely separated from "domain specific" knowledge or expertise. Furthermore, some research regarding the "knowledge structures" of the various professions and disciplines clearly indicates that differences between these different fields do in fact exist.⁴⁰ Thus, almost everybody now agrees that skilled thinking is often at least to a certain extent "context-bound."⁴¹

Notwithstanding the existence of the general consensus just noted, however, a considerable amount of research also exists suggesting that a common core of thinking skills does exist, a core of skills that transcends the boundaries of the individual professions and disciplines. Joan S. Stark, Malcolm A. Lowther and Bonnie M. K.

than law. See, e.g., Richard Carter, *A Taxonomy of Objectives for Professional Education*, 10(2) *STUD. HIGHER EDUC.* 135 (1985); Jim McKenzie et al., *Independent Study and Professional Education*, 10(2) *STUD. HIGHER EDUC.* 187 (1985); Sydney J. Pierce, *Characteristics of Professional Knowledge Structures: Some Theoretical Implications of Citation Studies*, 9(3) *LIBR. & INFO. SCI. RES.* 143 (1987). Discussions of the notion that significant differences exist between the thinking skills of people in different professions can be found in Darrin R. Lehman et al., *The Effects of Graduate Training on Reasoning: Formal Discipline and Thinking About Everyday Life*, 43 *AM. PSYCHOLOGIST* 431 (1988); Janet G. Donald, *University Professors' Views of Knowledge and Validation Processes*, 82 *J. EDUC. PSYCHOL.* 242 (1990).

40. Pierce, for example, argues that the structure of scientific knowledge is based heavily on consensus. Conversely, he argues that in connection with the structure of professional knowledge much less consensus exists. Pierce, *supra* note 39. In addition, Wilson and Gaff suggest that different fields and professions have different ways of codifying knowledge. WILSON & GAFF, *supra* note 11, at 55-59.

41. NICKERSON ET AL., *supra* note 2.

Hagerty, for example, analyzed the literature of professional education and surveyed the faculties of a number of different kinds of professional schools.⁴² These researchers then concluded that at least some generic skills cut across professional boundaries. Further, Brian Cohen argued that a number of generic skills exist in all of the professions.⁴³ (Cohen also argued, incidentally, that most professional schools do little or nothing in terms of teaching these skills.) Likewise, Donald Schon recently described thinking skills that he thought were at the core of all professions.⁴⁴ In addition, in connection with an analysis of reasoning in the field of medical practice, Daniel A. Albert, Ronald Munson and Michael D. Resnik provided a description of “clinical inference” that seems to closely resemble the kind of reasoning engaged in by people in all sorts of professions and academic disciplines.⁴⁵ Finally, Richard Carter has suggested that a “taxonomy” regarding the general objectives of professional education can be created, a taxonomy that can be used to evaluate curriculum and teaching at all different kinds of professional schools.⁴⁶

Several additional pieces of evidence regarding the existence of a common core of thinking skills also exist—pieces of evidence that need further elaboration. One of these, in turn, involves something mentioned earlier, namely, the GPEP report on medical education.⁴⁷ This report, as noted earlier, contained a blanket condemnation of then-current medical education and a strong call for change. This report also described the general practice skills involving thinking that all doctors must master, and that all medical educators must teach.

To keep abreast of new scientific information and technology, physicians continually need to acquire new knowledge and learn new skills. Therefore, a general professional education should prepare medical students to learn throughout their professional lives rather than simply mastering current information and techniques. Active, independent, self-directed learning requires among other qualities the ability to identify, formulate and solve problems; to grasp and use basic concepts and principles; and to gather and assess data rigorously and critically.⁴⁸

42. JOAN S. STARK ET AL., *RESPONSIVE PROFESSIONAL EDUCATION: BALANCING THE OUTCOMES AND OPPORTUNITIES* (1986).

43. Cohen, *supra* note 11, at 175-86.

44. DONALD SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987).

45. DANIEL A. ALBERT ET AL., *REASONING IN MEDICINE* (1988).

46. See Carter, *supra* note 39.

47. *GPEP*, *supra* note 37.

48. *Id.* at II.

It hardly need be said that the foregoing description of the general thinking skills that doctors necessarily must possess is a description that could be used with essentially no modification in connection with the thinking skills that should be possessed by virtually anyone who does intellectually challenging work, including, of course, lawyers.

Interestingly, work done recently by Donald E. Powers and Mary K. Enright in connection with plans to improve the Graduate Record Examination provides additional support for the notion that a common core of thinking skills cuts across disciplinary and professional boundaries.⁴⁹ Powers and Enright, seeking to gain a better understanding of the kinds of thinking skills that students must possess to do good work at the graduate school level, surveyed teachers in six wildly different kinds of graduate school programs (English, education, psychology, chemistry, computer science and engineering).⁵⁰ The researchers asked these teachers about the importance and frequency of use, by good or average graduate students, of different kinds of reasoning skills.⁵¹ They also gathered information from these teachers about the nature of commonly observed reasoning errors made by graduate students in these different academic fields.⁵²

The findings of this study were simultaneously not surprising, and surprising. Obviously, substantial differences emerged when teachers in these different fields ranked the importance of various reasoning skills. Chemistry teachers, for example, thought that reasoning skills involving the generation of hypotheses, questions and experiments were critical, as were skills involving the drawing of inferences and the evaluation of previous research.⁵³ Conversely, English teachers

49. Donald E. Powers & Mary K. Enright, *Analytical Reasoning Skills in Graduate Study*, 58 J. HIGHER EDUC. 658 (1987). Regrettably, one serious problem exists in connection with the Powers and Enright survey, a problem that these researchers candidly acknowledge. This survey did not actually measure the analytic skills of graduate students nor correlate those skills with success or lack thereof in graduate school. Rather, this survey simply gathered data regarding the *perceptions* graduate faculty members had about the importance or lack thereof of various analytic skills for success in graduate school. This is a critical point. Given the structure of the Powers and Enright research, it is impossible to tell whether any actual relationship exists between the skills described and success in graduate school. It is entirely possible, after all, that surveyed faculty members simply did not really know what kinds of skills actually are important in graduate school and what kinds are not. If that in turn is so, then entirely different skills than the ones listed might be the ones actually linked to success in graduate school.

50. *Id.* at 660.

51. *Id.* at 664-65.

52. *Id.* at 666.

53. *Id.* at 668.

thought that skills of argumentation were the most important skills.⁵⁴ These different rankings, of course, are not surprising. As noted earlier, most researchers now believe that a certain amount of “context-boundedness” exists in connection with thinking skills. Some findings in this study, however, were quite surprising. *In all six surveyed disciplines*, the interviewed teachers perceived each of the following skills to be at least “moderately important”:

1. Reasoning or problem solving in situations in which all needed information is *not* known (Mean Rating: 4.24 out of a possible 5.0);
2. Detecting fallacies and logical contradictions in arguments (3.92);
3. Deducing new information from a set of relationships (3.86);
4. Recognizing structural similarities between one type of problem or theory and another (3.83);
5. Taking well known principles and ideas from one area and applying them to a different specialty (3.75);
6. Monitoring one’s own progress in solving problems (3.71);
7. Deriving from the study of single cases structural features or functional principles that can be applied to other cases (3.68);
8. Making explicit all relevant components in a chain of logical reasoning (3.57); and
9. Testing the validity of an argument by searching for counter examples (3.57).⁵⁵

It hardly need be said, of course, that the thinking skills just listed are exactly the thinking skills that law school teachers think are important. Indeed, it is probably safe to say that the list just provided is a *better* list of the thinking skills that legal educators attempt to teach than anything heretofore produced by legal educators.

The foregoing, however, is not the only surprising data developed by Powers and Enright. Powers and Enright also found that teachers in all of the six wildly diverse academic disciplines perceived certain analytical errors to be particularly troubling. These errors, it is suggested, should sound rather familiar to legal educators:

54. *Id.*

55. *Id.* at 670.

1. Accepting the central assumptions in an argument without questioning them (mean score 3.96 out of a possible 5.0);
2. Being unable to integrate and synthesize ideas from various sources (3.96);
3. Being unable to generate hypotheses independently (3.94);
4. Being unable to see a pattern in results or to generalize when appropriate (3.76);
5. Ignoring details that contradict an expected or desired result (3.74);
6. Submitting a paper that failed to address the assigned issues (3.67); and
7. Basing conclusions on analysis of only part of a text or data set (3.57).⁵⁶

After collating their data, Powers and Enright concluded that five different general kinds of analytic skills exist. These five different kinds of skills, they believe, transcend professional and disciplinary boundaries:

1. The analysis and evaluation of arguments;
 2. the drawing of inferences and the development of conclusions;
 3. the definition and analysis of problems;
 4. the ability to reason inductively; and
 5. the generating of alternative explanations or hypotheses.⁵⁷
- These five skills, of course, are exactly the kinds of thinking skills supposedly taught in the law schools.

One additional set of evidence suggesting the existence of a common core of thinking skills must yet be mentioned. This set of evidence involves work done in connection with American College Testing Program's "College Outcome Measures Program" ("COMP")⁵⁸ and the Educational Testing Service's "Academic Profile." Both of these projects involve attempts to determine whether attendance at college helps students improve general thinking skills.

56. *Id.* at 671.

57. *Id.* at 678.

58. AMERICAN COLLEGE TESTING PROGRAM, COMP GUIDE (1991) [hereinafter COMP GUIDE]; AMERICAN COLLEGE TESTING PROGRAM, COMP: USING TODAY'S KNOWLEDGE TO BUILD A BRIGHTER FUTURE (1993) [hereinafter BRIGHTER FUTURE].

The COMP program is particularly interesting. COMP researchers began their work by preparing a list of general education knowledge and skill expectations commonly held by higher education institutions, in other words, a list of intellectual skills that seem to be relatively independent of context-bounded knowledge. The resulting list of analytic skills was then analyzed and sorted into two “dimensions.” One of those dimensions involves “process” and the other “content.” The process area dimension, in turn, was divided into three “outcome domains,” namely, (1) communicating, (2) solving problems, and (3) clarifying values.⁵⁹ The content area was also divided into three outcome domains, namely, (4) functioning within social institutions, (5) using science and technology, and (6) using the arts.⁶⁰ Each of the six individual outcome domains was then carefully defined. The process area outcome domain of “communicating,” for example, was determined to consist of six different but closely related skills. Those six are:

1. and 2. The ability to *receive* and to *send* information from and with oral presentation, media presentations, and nonverbal cues;
3. and 4. the ability to *receive* and to *send* information from and with written materials;
5. and 6. the ability to *receive* and *send* information from and with numeric and graphic presentations.

Likewise, and also by way of example, the “clarifying values” outcome domain was determined by COMP researchers to consist of six different skills:

1. The ability to identify the major values and issues usually faced in daily adult life in one’s own and other cultures;
2. the ability to assess a set of values for internal consistency;
3. the ability to identify the major influences in the development of values on individuals;
4. the ability to analyze rationales for value choices;
5. the ability to infer personal values from behavior; and
6. the ability to analyze the implications of decisions made on the basis of values.

59. COMP GUIDE, *supra* note 58, at 5.

60. *Id.*

After determining which analytical skills they wished to test for, COMP researchers produced a number of highly sophisticated measuring instruments. The most important of these is called the "composite exam."⁶¹ This exam can be used to measure the skills of individual students. Thus, it can be used as an individual diagnostic instrument. Unfortunately, this exam takes between four and a half and six hours to administer. (But, fortunately, part of it, notably the writing skills assessment, the speaking skills assessment and the assessment of reasoning and communicating, can be administered separately, and in significantly shorter times.) A second critically important instrument in the COMP battery is the objective test, a test that can be administered in about two hours.⁶² Research shows that the objective test can reliably be used to predict the scores of *groups* of students on the composite exam, but not individual students. Thus, though the objective test cannot be used as a diagnostic instrument for individual students, the test can be used to evaluate the overall effect of a school's curriculum and teaching.

COMP research, it is suggested, confirms the validity of the basic point repeatedly made herein, a point also supported by the Powers and Enright data, the GPEP report, and the other research briefly cited earlier. Though a certain amount of domain specific knowledge or context-boundedness exists in connection with the different academic disciplines and professions, a common core of thinking and analytical skills clearly does exist. In other words, certain kinds of thinking skills move across disciplinary and professional boundaries.

Regrettably, little of the research on thinking skills just involved direct work with law students or lawyers. In addition, and also regrettably, few of the people doing that cited research attempted to link up their general ideas with the profession of law. Thus, connections between the cited work, lawyers and law students are merely implicit. Fortunately, however, one commentator has directly linked one of the most important thinking skills that lawyers use with ideas about thinking skills from outside of the field of law. In a recent paper, Wangerin notes that people in various professional fields who talk or write about the process of "persuasion," and, consequently, about the "structure" of persuasive arguments, for the most part assume that the only people who have anything of value to say about these matters are people from within the professional field to which these speakers or writers

61. *Id.* at 6.

62. *Id.*

themselves belong.⁶³ Wangerin notes, for example, that when lawyers and legal educators talk or write about persuasion and persuasive arguments they seem, for the most part, to be interested only in the ideas of other lawyers and legal educators.⁶⁴ Likewise, and again simply by way of example, Wangerin notes that when journalists and journalism educators talk and write about persuasion and persuasive arguments, they for the most part seem to be convinced that no one other than someone trained or experienced in journalism could have anything worthwhile to say about this topic.⁶⁵

Wangerin, however, tries to break free of that parochialism. He assumes, therefore, that anybody who is interested in the process of persuasion—"editorialists, propagandists, advertisers, political campaigners, ministers, lawyers, courtiers and seducers"—can learn from anybody else who is interested in these things.⁶⁶ Wangerin begins his argument by describing the nature of persuasion itself and the structure of persuasive messages. He does this by drawing on ideas from the fields of law, communication theory and argumentation theory. Wangerin then provides an elaborate discussion of Stephen Toulmin's ideas about a "model" for persuasive arguments.⁶⁷ Toulmin's model, Wangerin suggests, indicates that persuasive arguments primarily consist of the application of rules—Toulmin calls them "warrants"—to factual situations.⁶⁸ Wangerin then suggests that Toulmin's model is too limited. Rather, Wangerin suggests that ideas drawn from the fields of cognitive psychology and computer science indicate that persuasive arguments also should contain arguments based on the use of "cases" or "analogies."⁶⁹ Further, Wangerin notes that lawyers have spent many years developing the notion of arguments based on "policy," i.e., the reason behind rules or cases.⁷⁰ Wangerin ultimately suggests, therefore, that persuasive arguments should contain examples of three wholly different kinds of reasoning, namely, rule reasoning, case reasoning, and policy reasoning.⁷¹

63. Paul T. Wangerin, *A Multidisciplinary Analysis of the Structure of Persuasive Arguments*, 16 HARV. J.L. & PUB. POL'Y 195 (1993).

64. *Id.*

65. *Id.*

66. *Id.* (quoting HERBERT W. SIMONS, *THE RHETORICAL TURN: INVENTION AND PERSUASION IN THE CONDUCT OF INQUIRY* 3 (1990)).

67. *Id.* at 202.

68. *Id.* at 204 (citing STEPHEN TOULMIN ET AL., *AN INTRODUCTION TO REASONING* 25-27 (2d ed. 1984)).

69. *Id.* at 209-20.

70. *Id.* at 218.

71. *Id.* at 227.

The value in the present context of Wangerin's multi-disciplinary description of the structure of persuasive arguments should by now be obvious. If he is correct in his claim that the underlying structure of persuasive arguments is similar, if not identical, regardless of the discipline or profession involved, then, clearly, the thinking skills used in connection with the creation of persuasive arguments in different fields and professions are similar or even identical.

CONCLUSION

Recall now that the discussion just concluded, a discussion of thinking skills and the structure of persuasive arguments, began with a question. Are at least some of the "practice" skills that lawyers use comparable to at least some of the practice skills that people in other professions and academic disciplines use? The answer to that question is now obvious. Though differences surely do exist between some of the thinking skills that lawyers use in their professional practices and some of the thinking skills that people in other professions and academic disciplines use, at least some of the thinking skills that lawyers use are comparable to at least some of the skills that people use in other professions and academic disciplines. This answer, in turn, complements the answer to a question that was implicit in an earlier part of the present analysis. That earlier question, of course, involved "learning" skills. The answer, again, is obvious. At least some of the "learning" skills that law students use are comparable to at least some of the learning skills that students in other parts of the university use.

The ultimate point demonstrated by all of the foregoing should also now be clear. If at least some of the learning and practice skills that law students and lawyers use are comparable to at least some of the learning and practice skills used by people in other professions and disciplines, then at least some of the teaching techniques that teachers use in other parts of the university should transfer over to the law schools. If, for example, journalism educators have developed teaching techniques that help journalism students learn how to use analogies or cases to build persuasive arguments, then legal educators should seriously consider employing those teaching techniques in the law schools. Likewise, if medical educators have developed teaching techniques that develop in medical students the desire and willingness to engage in learning after graduation, then legal educators should borrow those teaching techniques for use with law students. Finally, and again just by way of example, if researchers who study education

itself have developed teaching techniques that work well when it comes to training students to avoid the making of certain kinds of common analytical errors, then legal educators should shamelessly borrow and use those techniques.

None of these borrowings, of course, are likely to actually happen at any time soon in the real world of legal education. Legal educators are part of a well-established profession, a profession that must insist on the unique and exclusive nature of its knowledge and skills. Thus, like anybody who is a member of any profession or academic discipline, they are likely to resist looking to outsiders for ideas about anything involving their work. Further, legal educators have a special role in their profession, namely, the role of training newcomers. That role, however, requires them to inculcate in newcomers these notions of uniqueness and exclusivity. Thus, legal educators are even more unlikely to look to outsiders than lawyers generally, at least in connection with their teaching responsibilities. Finally, since legal educators are part of a very powerful profession, and since the profession of education itself is a very weak profession, legal educators are most unlikely to look to experts on education itself for ideas about teaching in the law schools.

Despite the gloomy picture just painted, one thing exists that might bring about some change. As noted earlier herein, professions and academic disciplines constantly battle each other for jurisdiction and power. Thus, if one profession or discipline has something or does something that seems to generate for it a seeming advantage vis a vis other professions and disciplines, those other professions and disciplines must necessarily counter.

Ironically, something just like this may already be happening, something as yet unknown to most legal educators. As noted earlier, almost all of the articles on legal education that appear in the *Journal of Legal Education* and other law journals contain no references to ideas drawn from the discipline of education itself. Rather, most such articles seem to view teaching and learning in law schools as something that can only be understood and done by insiders to the profession of law. The same is true of virtually all books on legal education. Law is, it seems, a completely self-contained universe. Interestingly, the same cannot be said about the disciplines of medical and dental education. Many of the articles that appear in *Academic Medicine*, the *Journal of Dental Education*, and comparable journals, and numerous books on medical education, contain extensive references

to ideas from the discipline of education itself.⁷² It is clear, therefore, that at least in this context, the disciplines of medical and dental education are far ahead of the discipline of legal education.⁷³

But how does the difference just portrayed create a jurisdictional advantage for the disciplines of medical and dental education vis-à-vis the discipline of legal education, a jurisdictional advantage that the discipline of legal education must soon counter? The answer to that question, it turns out, is simple. As Donald G. Kassebaum has noted in his analysis of medical education,⁷⁴ and as Wangerin has noted in his analysis of the evaluation of teaching itself in the law schools,⁷⁵ general forces at work in this society seem to be imposing larger and larger burdens of accountability on all kinds of educational institutions. Parents, school boards, provosts, legislatures, accrediting agencies, and professional associations are beginning to demand *proof* of educational effectiveness rather than mere bluster about it.⁷⁶ Proof in this context, however, is much more difficult to produce than bluster. Further, and more importantly, proof in this context cannot be produced at all if people in the educational institutions involved categorically refuse to seek aid from people who have demonstrated expertise in the development of such proof, people, that is, who have received training in the discipline of education itself.⁷⁷

72. See, e.g., *THE MEDICAL TEACHER* (Kenneth B. Cox & Christine E. Ewan eds., 1988); KEAREN C. DOUGLAS ET AL., *A PRACTICAL GUIDE TO CLINICAL TEACHING IN MEDICINE* (1988).

73. Admittedly, medical educators themselves may not as a general rule be quite as receptive to the use of non-medical ideas about education as are journal and book editors in that field. See Nelson et al., *supra* note 19, at 122-26.

74. Donald G. Kassebaum, M.D., *The Measurement of Outcomes in the Assessment of Educational Program Effectiveness*, 65 *ACAD. MED.* 293, 293-96 (1990).

75. Paul T. Wangerin, *The Evaluation of Teaching in Law Schools*, 11 *J. PROF. LEGAL EDUC.* 87 (1993).

76. See generally Sarah M. Dinham & Linda M. Evans, *Assessment and Accreditation in Professional Schools*, 14 *REV. HIGHER EDUC.* 217 (1991).

77. For an excellent description of methods for gathering proof in this context, and the need for such proof, see *id.* Regrettably, this piece concentrates primarily on *undergraduate* professional education.