

REPORT OF THE NATIONAL LAW STUDENT CONFERENCE ON LEGAL EDUCATION

FOREWORD

ERWIN N. GRISWOLD *

One of the aspects of legal education which has helped to keep it healthy is the fact that it has always been subject to self-criticism. We are inclined to forget the past, and to think that discussion of objectives and methods of legal education has been a recent development. But the *Index to Legal Periodicals* is full of references to articles and speeches on legal education over a period of a century. Most of the careful consideration of the problems has come from law teachers. Much of it, especially in the earlier years, has come from practicing members of the bar.

Only rarely have law students formulated their views of the process, although they are the group who are in many ways best qualified to evaluate it. This is not because law students are inarticulate. Those who try to teach know that that is not so; and the teacher often learns much from their comments. It is rather because law students are a quickly changing group, who become practitioners and teachers themselves before they ordinarily have much opportunity to express their views in any formal way.

As far as I know, the National Law Student Conference on Legal Education was an entirely spontaneous organization brought forth by law students themselves—that unusually mature and qualified group of students who have been acquiring their legal education in the post-war period. When the project was first broached to me, I am afraid that I had immediately the educational administrator's instinctive reaction: "Why can't these tyros mind their own business, and leave these difficult questions to us?" Or, "Here is another group trying to upset the applecart. They should see that our methods are good, based as they are on our long and rather intense experience." But it was soon apparent that the group involved was very much in earnest, and not especially in an iconoclastic frame of mind. (Indeed, it is rather interesting to see in the report of the Conference the extent to which the men from a particular school felt called upon and were willing to defend the practices of their school.) The Conference was well planned, and developed into a thorough exploration of current problems in legal education. I

* Dean, Harvard University Law School.

think that, on the whole, it produced little that is new in the way of criticisms, or in the way of suggestions for development of law school practices. But it did serve to emphasize old criticisms and suggestions. The publication here of a summary of its proceedings will serve not merely as a record of student thought with respect to legal education now, but also as a stimulus to law teachers who are charged with the continued conduct of legal education.

Four points suggest themselves to me on a reading of the material which follows, three by their presence, and one by its absence. Perhaps it will help to introduce the reader to the report if I note these, with a brief comment on each one.

1. *Case method.* No discussion of legal education is complete without reexamination of the case method. So it has been for the past seventy-eight years. Yet most of this discussion seems to me to be futile. More than forty years ago a distinguished English observer of American legal education wrote: "The present position of the case system in American law schools scarcely admits of precise definition. . . . In the same school, different teachers adopt different methods."¹ There are, and should be, as many forms of the case method as there are teachers. Certainly it should be used differently in a third-year seminar than in a basic first-year course. But the case method is only a tool, the possibilities of which have been pretty thoroughly demonstrated; and its limitations are fairly well known. What is important is not method, within wide limits, but teachers. A good teacher will develop his own method, and probably won't be as good if he tries to force himself into some other method.

2. *Extra-legal materials.* Another perennial is the extent to which the law course should deal with matters which our grandfathers would not have called legal. I use "grandfathers" advisedly, for no one since the time of our fathers has doubted the fact that law is very thoroughly intermingled with other social sciences—history, sociology, economics, psychology, philosophy, ethics, anthropology, to give an incomplete list. The question is not whether law students should be aware of these things, but how and when. Is there a function for a college education? Have our colleges completely failed in their objective? Should law schools take over the complete education of the prospective lawyer from the secondary school on? Is it impossible that law teachers teaching law may be cultivated, too, and aware that law operates as a means of social control in a complex society?

Certainly experimentation with means to meet this problem should continue. But presumably the law student should know some law. Law

¹ Brown, *The American Law School*, 21 L.Q.REV. 69, 72 (1905).

is designed as an instrument of social control. It is not a mere tool for reaching objectives. It has a history of its own, a method of its own, and some standards which may not be shared by all other disciplines. It takes some law to make a lawyer.

3. *Practical training.* A constant complaint about law schools is that they do not turn out finished lawyers, ready on their own immediately to vindicate any right in any forum, or to draft legal documents of any desired complexity. This point is constantly made by the practicing members of the bar, and it was voiced by a distinguished judge at the concluding dinner of the present conference.² There was a time when law training was almost exclusively practical. The apprentice system was followed in this country for many years; and it is possible that it gave way because legal education in law schools demonstrated its superiority.

But should not the schools teach practice too? That resolves itself, it seems to me, into a question of the best way to use time. Can the schools do something better than teach practice, something that cannot be done as well after the man leaves school? I think they can. And I think, too, that they are not very well qualified to teach practice, at least not so well as the law offices during a man's first year out of law school. If this means that the law schools do not turn out men who have learned all they ever need to know, that should surprise no one. In many respects the first year or two of practice is and should be an internship. Any good lawyer's education continues throughout his whole career at the bar.

The medical profession has taken economic advantage of the fact that the medical schools do not turn out finished doctors, and this has imposed a severe burden on entrance into active medical practice. It is, I think, to the credit of the practicing members of the legal profession that they have very generally not exploited young law school graduates.³ But there can be no doubt that a large part of legal education is still conducted in law offices—in the young graduate's own office if he hangs out his shingle by himself. And there seems to me little room to doubt that that is as it should be.

4. *The public responsibility of the lawyer.* My final point is one which does not appear to have been dealt with directly by the Conference, though it was, no doubt, implicit in much of the discussion. It is the re-

² Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).

³ Current graduates may be interested in the observation of the English visitor from whom I have already quoted: "The student who has passed through our school, I heard one Dean say, 'may count with certainty on immediately securing a minimum salary of \$500.'" Brown, *The American Law School*, 21 L.Q.REV. 69, 71 (1905).

sponsibility of legal education for fostering and inculcating the budding lawyer's awareness of the opportunity and responsibility of the lawyer for service to the public. In some ways this seems to me to be the central problem of modern legal education. I do not mean to suggest that there have not been many lawyers, through the years, who have contributed greatly to the public welfare. But I do suggest that as a profession we have not wholly lived up to our possibilities, and if that is true, the schools must share responsibility for it.

In many respects our law is outmoded; many of our legal institutions are inadequate. For the most part legal service is a luxury, available in any real sense to only a small portion of the public. (It is still a question whether a defendant charged with a serious crime is entitled to the services of qualified legal counsel.) But the problem is broader than that. Even when counsel are well paid, or especially when they are well paid, they tend, naturally enough, to forget the public interest and their public responsibility. Thus the trust-company lawyer soon sees only the trust-company point of view; the insurance or railroad lawyer in times past seemed to carry the insurance or railroad torch with him even to the bench. Fortunately this is a matter on which there are significant exceptions. But it should not be a matter of exception. If there is anything that a law school education should do it is to develop the attitude of public responsibility in the young lawyer.

This was the burden of Mr. Justice Stone's notable address on "The Public Influence of the Bar."⁴ Many years ago, William Draper Lewis put the point with particular reference to the function of the law schools. He wrote:

Our ideals shape our actions. The lawyer is no exception to this rule. The lawyers of the United States fail to perform what I have called the public duties of the profession, while the English lawyer and our brethren of the medical profession to a large extent perform their public duties, because they have and we have not any idea that we have such duties. This lack of perception has its root in our legal education. For the law offices and the night school there is an adequate excuse. But for the university law school there is no such excuse. If, as a profession, we are to awake to our failure to perform our public duties, it is the small class of men who are devoting their lives to legal teaching who must point the way.⁵

Lawyers should have spirit as well as learning. They should have depth as well as breadth. Here is the challenge and the opportunity of the law schools and of the bar.

⁴ 48 HARV.L.REV. 1 (1934).

⁵ Lewis, *Legal Education and the Failure of the Bar to Perform its Public Duties*, 45 AM.L.REG. (N.S) 629, 645 (1906).