

# REPORT OF THE NATIONAL LAW STUDENT CONFERENCE ON LEGAL EDUCATION \*

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## II

### CONTENT OF LEGAL EDUCATION

#### B. Instruction in Practical Craft Techniques

Fully as important to a very large proportion of the delegates as the curricular content of their legal education was the matter of law-school training in the practical skills of lawyerhood. One panel's discussions were devoted entirely to this subject, but its importance was emphasized by the frequent interweaving of specific proposals for practical training into the discussions of other panels. Most notably this was true of the Rural Lawyer panel; it was also true of the panels on the Urban Lawyer, the Labor Lawyer, Public Life, and Placement. Despite a logical tendency to refer these items to the Practical Craft Techniques panel when they came up in other panels, their relevance to the substantive matters at hand (such as the Yale delegation's proposals for labor law training) and a conviction that certain skills are part of "the very stuff of law" prevailed to cause those panels to take up particular "trade skills" regardless of the possibility of duplication. Reportorial convenience—partly in accommodation to the two-part subdivision of this report—alone accounts for the lifting of those discussions out of their context and their forced conjugation under one subhead.

Nevertheless, a substantial minority urged that law school is not the place to teach practical skills at all:

Once a man gets out of law school, everything he does is practical. . . . He does not get any more lectures on legal ethics, theory of contract law, theory of torts. He handles each problem on an *ad hoc* basis. . . . Devoting a major portion of the curriculum to the teaching of practical techniques, I believe, would be a waste of time. More important things should be accented . . . things that make you a human being as well as perhaps a lawyer, make you more than a carpenter of law—a person instead of an artisan.

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Apprenticeships would be relied upon to supply this intentional omission in legal training. In fact, apprenticeships can be more effective, for they give experience in real problems; they can be taken in the locale and in the type of work in which the man intends to practice, and when so taken they have a distinct advantage over law-school training, which can never anticipate more than a fraction of the problems which any lawyer may have to handle. Where apprenticeships are unavailable or will not do the job, two alternatives were suggested: (1) County legal aid societies offer an opportunity for young practitioners in many communities to obtain practical experience, often under more experienced tutelage; (2) a longer law course, in which the later semesters are interrupted by periods of practical experience outside the school, would provide the advantages of apprenticeship training while resulting in the graduation of men who have already had much practical training.<sup>1</sup>

The majority, however, supported its position that law-school training should include practical matters by severely criticizing the minority's apprenticeship assumptions. First, they said, it is widely known that apprenticeships will not be available for the larger number of the nation's law graduates, at least not on sufficiently attractive terms to induce men to take them. With respect to such men a school not offering practical training is guilty of putting into the practice of law men not equipped to handle a client's affairs. Second, apprenticeships that are obtained are often far from valuable to the apprentice. While it is to be expected that experience, and not money, will be the most valuable compensation earned by an apprentice, many offices are even stingy about giving really valuable experience. A year wasted in running errands and doing office stenography is more than a year lost to the young lawyer; it can be a positive set-back. Finally, for the many men who might open their own offices immediately after graduation, lack of practical training was felt to be a serious competitive disadvantage. The mental handicap that accompanies this disadvantage may have an undesirable influence on the choice of careers that is made at that time, driving some able men out of law altogether and pushing others toward the larger cities despite important considerations favoring practice in a smaller community.

When the majority went on to state that its conception of practical craft techniques included such law-school-taught items as case analysis, legal research and writing, and oral advocacy, the minority agreed that at least some of them are "the very stuff of law." Other skills admitted-

<sup>1</sup> Such a system was said to be in effect in Manitoba, though none of the delegates knew any of its details.

ly cannot be taught as adequately in law school as out of it. But differences persisted as to where the line should be drawn.

No agreement was reached, however, on a proposition that all "trade skills" should be taught extra-curricularly—without compulsion and without credit. Too many of the majority felt that training in skills was so essential that a law school's stamp of "LL.B." ought not to be placed on a man who has not received it—whether he intends to go into practice or not. And many thought the work ought to be sufficiently time-consuming to deserve proportionate credit.

### 1. *Skills traditionally taught in law school*

Classification of case analysis in the category of "practical craft techniques" at least served the majority to the extent of calling attention to one skill that has traditionally been thought more important in law schools than the imparting of information or the development of culture. Where discussion centered on this skill—principally in the Teaching Methods panel, whose conclusions are stated below—it was generally concluded that this, alone among the skills, had in the past been over-emphasized in law schools.<sup>2</sup>

It was generally agreed that legal research and writing, on the other hand, have been under-emphasized in law-school training, though they are usually given some place in the training program. Current methods of presentation, as reported to the Craft Techniques panel, varied from the almost complete absence of formal training at Harvard to the elaborate tutorial system at Chicago. The Chicago program, it was reported, occupies almost half the first-year student's time (though it is not given proportionate credit), and supplements formal instruction and assignments with extensive tutorial conferences that incidentally serve a guidance function valuable for general law-school orientation as well as for the development of research and writing skills.<sup>3</sup> Many schools offer merely a one-semester lecture course; one delegates the responsibility to a law-book publisher's representative who offers a series of extra-curricular lectures. The many schools which emphasize such practical projects as brief writing for moot-court competitions, instead of formal courses of instruction, were thought to give more valuable training; doing is more important than being told how to do. But the written essay requirements at Harvard and Columbia did not merit the same approbation; they engage the student in a too-academic approach to his problem, and their mechanics omit the elements of criticism and editorial

<sup>2</sup> See objections of the Teaching Methods panel at p. 235, *infra*, and those of the Yale delegation related in Part I of this Report, 1 J. LEGAL ED. 64, 90 (1948).

<sup>3</sup> See also Kalven, *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL ED. 107 (1948).

revision which are present in moot-court brief writing, particularly where the briefs are written by a team.

Law-review work and participation in intramural legal publications, particularly the former, are widely used as vehicles for this type of training. Despite their susceptibility to the objection of academic emphasis which was made against essay requirements, they were generally thought to be among the best forms currently offered. In addition to their requiring of the participants a much greater volume of work, they are more valuable because of the intense editorial revision and criticism to which the student contributions are subjected. Moreover, the prospect of publication provides an incentive unmatched in most other types of research and writing programs. A New York University delegate reported that an intramural law review provided similar incentive for the non-law-review students, who are required to prepare two articles during their course of study. The better articles are published in this organ, and "every student aspires to the publication of his writing even though he may not have attained the scholastic achievement" of a position on the regular law review. This method of meeting the criticism that law-review training is open to too few is, of course, only partially successful, but to that extent it is deserving of commendation.

The consensus of the Craft Techniques panel was that training in legal research and writing was almost universally too limited in view of the current importance of those skills in law practice. The panel severely criticized the mediocrity of the usual first-year lectures in legal research and bibliography; if such courses are to be given, a first-rate teacher, rather than a member of the library staff who takes the job as incidental to his other duties, is needed as much as in any other course. But, more than lectures, a wide range of assigned projects involving research and writing is needed, together with tutorial assistance and editorial revision. For these services upperclassmen in high standing can be used where faculty would otherwise be overtaxed. The programs now in operation in many schools offering research and writing projects in connection with moot-court competitions, law reviews, and intramural legal publications serve an essential need in this type of training and in most places should be extended. The *sine qua non* of valuable training in writing in any project is the provision of machinery for intensive editorial revision and criticism both as to content and as to style and form.

Next, the panel listed advocacy as a skill receiving some, but inadequate, attention in most law schools. Nearly all schools represented were reported to have some sort of appellate moot-court program in operation. Such programs received general approval, and attention was

turned to trial-court programs. Only a few delegates boasted of trial-court programs already in operation in their schools. Those who did generally asserted success for them, although some conceded validity to the criticisms that "canned facts" and "coached witnesses" make it impossible to "get the atmosphere that you would expect to get in the normal courtroom." Three schools, Colorado, Emory, and Arkansas, were reported to have met that objection by basing their trials on actual facts—either a staged crime or tort (the witnesses not knowing, at the time, that it was staged) or an actual dispute between students at the university (such as one arising out of a crumpled fender in the law-school parking lot) which the parties were willing to have litigated in a moot trial at the law school.<sup>4</sup> Even a delegate from one of these schools admitted that "some sort of supervision" was necessary, however, for the students who know the facts, when they hear the witnesses being examined, "are liable to make a joke out of the whole thing." Judge Frank, advocating observation of actual litigation instead, felt that frivolity necessarily had to accompany "such fake trials."<sup>5</sup>

But the demand for law-school preparation for trial practice, on the part of the large number who expect to start on their own, was insistent:

The small-town lawyer must be a trial lawyer. . . . He will probably be judged by the community as to his ability as a lawyer by the manner in which he handles himself in court. . . . From his first day of practice the small-town lawyer must be capable of trying cases in all their stages.

Small wonder that the Craft Techniques and the Rural Lawyer panels risked the ridicule of critics such as Judge Frank in advocating the extension of trial programs in moot court. Some delegates to the Teaching Methods panel, as well as others at the Rural Lawyer panel, also advocated the use of motion-picture films to teach trial techniques. Such a film was being made at the University of Washington at the time of the conference.<sup>6</sup> Others advocated, as did Judge Frank, supervised visits to local courts, followed by classroom "post mortems" and, if possible, by analyses by the lawyers participating in the trial. Courtroom visits are a part of the regular program at Pittsburgh. But if "learn-

<sup>4</sup> Usually such actual disputes are minor and would be settled by agreement but for the parties' willingness to provide grist for the moot-court mill. Often they are actually settled by agreement, but the settlement is ignored in the mock trial.

<sup>5</sup> "Such fake trials [referring to those based on staged facts] are poor substitutes for careful observation of actual trials. Would any medical school substitute pretended surgical operations for real operations as a means for instructing students? Obviously, such sham law school trials can do little more than 'afford amusement,' or serve 'as a relief from tedium.' They are not the equivalent of serious lawyer work." From his address at the concluding dinner. See Frank, *A Plea for Lawyer-Schools*, 56 *YALE L.J.* 1303, 1316 (1947).

<sup>6</sup> Now completed and available for general use. See note 21, *infra*.

ing by doing" is to guide training in skills, these visual aids and visits cannot be a substitute for a successful trial moot-court program. The emphasis in discussions in the Craft Techniques panel, as well as in several others, upon trial moot courts indicates that the delegates did not share Judge Frank's faith in the efficacy of watching other men conduct litigation.<sup>7</sup>

## 2. *Skills not traditionally taught in most law schools*

In considering skills which it thought should be given attention in law schools and are generally neglected, the Craft Techniques panel first discussed the related skills of counseling and planning. Two delegates stated that their schools "taught" those skills in their Practice courses. But even more articulately than before (in connection with research and writing and with advocacy), the panel concluded that listening and observing are no substitute for doing as a mode of learning such skills:

When you sit there and listen while somebody else interviews a person, you don't get one-tenth the benefit that you get when you are actually participating, sitting down and talking to a person and hearing his problems. It gives you a tremendous amount of confidence, if you happen to need that, to have a person come and look to you for advice and present his problems.

The few schools which had a legal aid program, or some responsibility for work with a local county bar association's legal aid society, therefore, received the strongest approbation from the panel. Rutgers was reported to have a comparable program in an arrangement with an Essex County Common Pleas judge. A panel of available students was regularly submitted, from which the judge would select assistants to lawyers assigned to defendants on the criminal docket. Of course, more is involved in such experiences than the skills of counseling and planning; but especially the legal aid students, who report that most of the work is on domestic relations and landlord-tenant cases, find the dosage of counseling gratifyingly heavy.

At Columbia, it was reported, a course in Selected Legal Problems is based on specific law-office problems that have been handled by one of the New York offices. The problem is put to the class as nearly as possible in the form in which it came into the office, and the students spend

<sup>7</sup> Amusement and frivolity at mock trials is, of course, consequent upon knowledge that the facts have been staged or that the amount in dispute is ridiculously small for the ponderousness of trial court procedures. But the competition to demonstrate a greater skill in trial technique is serious business to the student lawyer, however much the competition to get an empty judgment may seem frivolous to the litigants and observers. The amusement does not affect the student lawyer as it does the bystander. Of course, this does not answer the argument against trials based on "canned facts."

their time preparing individual solutions—courses of action to be offered to the client as advice responsive to his problem. Then a representative of the office in which the matter was handled meets with the class to discuss the student solutions and to present his own solution and his reasons for handling the problem as he did. Though not offering the experience in counseling which legal aid work affords, this course introduces students to legal planning on a scale not possible in other law-school activities, even legal aid work. The panel advocated both programs; each has advantages which the other cannot attain.

A large portion of the discussion in this panel was directed to the skill of drafting—drafting of legislation as well as of ordinary legal instruments. In addition, the attention which several other panels paid to the subject of drafting testified to the importance which a large proportion of the delegates attached to the subject. This was particularly true of the Rural Lawyer panel, but also of the Urban Lawyer and the Public Life panels; and, as was mentioned in Part I of this Report, even the Placement panel devoted some time to the subject.<sup>8</sup> “I feel very strongly about this particular problem,” one delegate urged. “Drafting is very essential, I think, to understanding what you are going to do when you graduate. . . . I submit to you that because most of us can’t make a will, or can’t make a deed, or close a deal, that is why we are only five-bucks-a-week men when we get out.” Again it was emphasized in this connection that “some of our students will graduate from law school and may not have the benefit of office apprenticeship . . . may have to step right out, open an office, and start to practice.” “Someone asked the question whether we are going to expect to go and compete with people who have been practicing law twenty-five years. . . . The answer is Yes. . . . It is not universal that people go to work for somebody else.” The minority who urged that law school is not the place to teach practical skills at all returned to the battle in response to this strong urge for training in drafting:

I think we are overestimating the necessity of being able to draft various papers. If someone asked me to do that, I would probably pass through the floor, but I’m willing to bet that I would be able to straighten it out for myself without too much difficulty. I probably would be able to call up a friend and get a copy, change the facts, and end up with a pretty good job. I think we tend to be afraid of what we are facing. We want to look like lawyers. Just drawing up a will or partnership is not going to make us lawyers.

<sup>8</sup>In connection with its discussion of means of raising the starting income of law-school graduates, mentioned in Part I of this Report, 1 J. LEGAL ED. at 81-82 (1948).

But the majority were not convinced that they were merely seeing shadows. Moreover, certain collateral advantages might accrue from law-school teaching of drafting:

I have an idea, although I don't know much about it, that the lawyers don't do an adequate job of teaching the young lawyers how to draft instruments. It seems to me that they teach them to mimic to too great an extent. . . . If the law schools tried to teach it, I think they might do a better job . . . because the practicing lawyers are interested in the security of this transaction and they are somewhat afraid to write something more radically and more readably.

Elsewhere it was argued that the effectiveness of substantive-law teaching is also involved: "If a student acquires an awareness of drafting problems and a capacity to deal with them, his ability to reason logically and in a lawyer-like manner has been improved."<sup>9</sup>

Consistently with the last argument, most of the proposals on how to teach drafting concentrated on assimilation within the present substantive-law courses. The drafting of wills should be taught in connection with courses on Wills and Future Interests. Pleadings might be drafted in courses on Civil Procedure or Pleading, or different types of pleadings might be done in Torts, Domestic Relations, and other substantive-law courses. More is involved in this proposal than merely the drafting skill. Advocates of developing "the capacity for total decision"<sup>10</sup> emphasized that integration of drafting problems into substantive-law courses introduces practice in legal planning which, depending on the manner of presentation, may become as extensive as that involved in the Columbia course in Selected Legal Problems.

Some thought that legislative drafting, as well as construction, ought to be taught in courses such as Taxation, Labor Law, Administrative Law, Bankruptcy, and others in which statutes necessarily occupy an important part. At present, different delegates reported, where statutory drafting is done at all it is usually done in a separate course on Legislation, or in an extra-curricular activity. Indiana conducts a mock legislature to give experience both in drafting and in legislative techniques. Wisconsin proposes to include statutory drafting in a summer clinic designed to emphasize a number of different practical skills. The *North Carolina Law Review* gives its student editors such experience through biennial critiques of the work of the state legislature. Although the emphasis is on study of bills actually passed, the work includes occasional attempts to redraft certain provisions. The panel was not critical of such programs to teach statutory drafting independently of substantive-law courses, though it favored integration into such courses generally

<sup>9</sup> From the Harvard delegation's paper for the Urban Lawyer panel.

<sup>10</sup> See Part I of this Report, 1 J.LEGAL ED. at 90-93 (1948).

for the teaching of all kinds of drafting. One delegate suggested that drafting done in substantive-law courses be subsequently worked into the moot-court program to enable the author of the instrument or statute to test it in litigation.

Techniques in informal and out-of-court settlements came in for only a small amount of discussion. A Chicago delegate reported his impression that a successful visitation program had been conducted at Chicago before the war, the students sitting in on pre-trial conferences. The judge himself would frequently discuss with the students at a later date their written critiques of the conference. The delegate thought that present dockets were too crowded to permit the resumption of such an additional burden on the judges. The only other school represented on the Craft Techniques panel to report any effort in this direction was Notre Dame, which was said to "touch" on the subject in the course on Legal Ethics. However, the Yale course on Case Presentation, reported to other panels, apparently devotes a large share of its attention to practice in settlement negotiations.<sup>11</sup> A great many delegates doubted that enough could be taught, apart from the substantive law involved in any case, to develop a skill in such negotiations apart from personality advantages peculiar to the individual. This view was not shared, however, by delegates familiar with either the Chicago or the Yale program.

Arbitration received separate consideration in the Craft Techniques and the Labor Lawyer panels. Many delegates were surprised to learn from Columbia and N. Y. U. students of the extent to which arbitration is used in commercial disputes in New York, but all were aware of its growing significance in the field of labor relations under collective-bargaining contracts. Still, few delegates reported that any attempt was made at their schools to teach either the law of arbitration agreements and awards or the skills involved in conducting arbitration proceedings. "At Columbia, in the Civil Procedure course, it is the last chapter in the book and is never gotten to."

With respect to existing and previous attempts to teach arbitration law and skills, it was reported that Chicago had before the war a visitation program which took students to see arbitration proceedings being conducted. This, like the similar program of observation of pre-trial practice, had been discontinued, and arbitrations were now considered only from the perspective of classroom discussions, in a Labor Law course. Labor Law seminars at Wisconsin and Yale had the benefit of the extensive experience of Professors Feinsinger and Schulman. A Columbia delegate reported that his school had at least once attempted

<sup>11</sup> See also Mueller and James, *Case Presentation*, 1 J.LEGAL ED. 129 (1948).

a moot arbitration, comparable to the usual moot-court programs. The most extensive practice in arbitration procedures reported was that contained in the Yale course on Case Presentation, a description of which was read to the Craft Techniques panel from the Yale paper for the Labor Lawyer panel.<sup>12</sup> Most delegates felt so unfamiliar with the whole field of arbitration that they regarded themselves as unqualified to make constructive suggestions as to how arbitration should be taught or even as to how extensive the teaching of it ought to be. But that very unwillingness to speak, on the part of students who had been perfectly willing to hold forth on such unfamiliar topics as the differences between the skills required of urban and rural lawyers, seemed indicative of a significant lack in the face of the admittedly growing importance of arbitration as a part of the lawyer's job.

Only brief attention was separately given to the skills of fact-finding and trial preparation, apart from the previously mentioned discussions of trial moot-court programs as an aid to teaching advocacy. Moot court and legal aid work were the most generally used programs offering any aid in developing this skill. Yale's course in Case Presentation, although described by the Yale delegates in order to present their ideal for the teaching of arbitration techniques, was said to place equal emphasis on trial preparation and procedure. One delegate suggested that these special programs be supplemented by stress on the fact-finding aspects of any problems discussed in the substantive-law courses. At least one professor, in using problem-method teaching, was said by this delegate to use classroom discussions of his problems for this purpose.

### 3. *Special programs and proposals*

The Wisconsin delegation, authors of a paper submitted to the Craft Techniques panel, provided the conference with a full description of two special programs—one in existence, the other only a proposal at the time of the conference—which apparently originated with their school. Their Embryo Lawyer's Club is a student organization restricted to third-year men. Luncheon meetings are held weekly throughout the year and practicing attorneys, judges, and businessmen are invited to speak and conduct discussions at each meeting. Out of the club's treasury funds are provided to mimeograph, in advance of each meeting, such material as the speaker may select to illustrate or amplify the points he intends to make. In general, the topics center on the practical aspects of professional life; often the accompanying mimeographed material will include all the documents prepared by the speaker in connection with a special proceeding—the probate of a will, the foreclosure of a

<sup>12</sup> See *id.* at 132-133.

mortgage, or some other integrated proceeding or transaction. The faculty assists in engaging speakers and planning the series of meetings.

The proposed program at Wisconsin calls for a summer clinic, designed in part to fulfill a state bar admission requirement of either a six months' apprenticeship or six additional credits in law school after graduation. To supplement an anticipated dearth of desirable apprenticeship opportunities, the program would seek to perform a function comparable to that of an apprenticeship. To attract practicing attorneys, as well as to bring in fees to help defray the additional expense, several special institutes would be held in fields, such as taxation and labor law, in which recent developments provide material for lectures and discussion. For the law students, the program would consist of a series of discussion groups led by practicing attorneys on specific drafting or other practical problems. After discussion, special problems would be assigned to individual work groups—sub-groups of the original discussion group—to be worked out during the same day and brought back for criticism and final discussion. Finally, a single comprehensive problem would be assigned to each student which would embrace several fields of the law and cross ordinary course lines. About a week would be allotted to it at the end of the summer.

A Rutgers delegate made a worth-while proposal of quite a different nature. He called it "legal institute" work. His "institute" would be made up of upper-class law students who would devote their extra-curricular time to work on legal problems, having social or political aspects, which are of current importance to the community or state in which their school is located. For instance, he suggested, Rutgers law students gained much practical experience and at the same time performed a beneficial service by engaging in research and other preparatory work on New Jersey's recent constitutional revision. His proposal would convert the active practitioner's laboratory into a student's laboratory as well, would bring the student into direct contact with the practical considerations facing those actively engaged in public work, and would carry with it the added incentive arising from knowledge that his work was not moot but real.

Among the special programs in operation at some schools, several delegates mentioned visits to such institutions as the courts, the offices of the clerk and the register of deeds, state offices for filing certificates of incorporation and other corporate papers, state prisons, and mental institutions. Although the importance assigned to such visits varied greatly, and with it the extent of preparation for and the post-visitation discussion of the institutions, most delegates felt that some degree of

realism was added to their comprehension of the related subject matter in law school.

At the conclusion of its discussion of the teaching of a large number of the skills here mentioned, a delegate at the Craft Techniques panel undertook to summarize what appeared to be its consensus:

The needs of the law student can best be met in two ways: first of all, through instructors' paying a little more attention in their substantive-law courses to the matter of practical application to the techniques of drawing instruments and so on; and second, through voluntary efforts of the students in those activities such as moot court, clinics, and what not, to obtain more of the practical side of the study of law which is necessary whether they are from a large community or a small community, and whether they are going to specialize or go out on their own as general practitioners.

Assent to his conclusions, in contrast to the more contentious initial discussion on whether practical skills should be taught in law schools at all, appeared to indicate that the mere listing of skills to be learned and discussion of ways to teach them made more converts for the advocates of practical teaching than direct persuasion had done.

### III

#### TEACHING METHODS EMPLOYED IN THE LAW SCHOOL

All discussion of teaching methods was related to discussion of objectives and revealed a conviction of inadequacy in the stated objectives of our schools. It was almost universally felt that the present, dominant objective of "training men to think as lawyers" is too narrowly adhered to, and sometimes too narrowly interpreted. The premise of such adherence is that law schools are to train merely law practitioners and that, apart from a number of skills such as drafting, advocacy, and legal research, ability to "think as a lawyer" is all that differentiates the law practitioner from the layman. And since "anyone can look up the law" and, apparently, learn the other practical skills, training in the peculiar skill of legal reasoning is what the school can contribute, more than all else, to prepare a man for law practice.

Actually, delegates quite universally agreed, the premise is untrue on two scores: first, modern students do not come to law school exclusively for the reason that they intend to become practitioners; and second, the modern practitioner needs much more than the ability to "think as a lawyer," in the traditional sense, and much of this necessary equipment is not so easily acquired as is implied by the claim that "anyone can look up the law."

The Wisconsin paper for the Placement panel, for instance, estimated that "probably one-third to one-half of the men and women

currently enrolled at the Wisconsin Law School hope to enter work in government or industry, rather than private practice, upon graduation." The Western Reserve paper on Teaching Methods, assuming such a changed complexion in law-student population, advocated the enlargement of law-school aims to include that of passing on "a deep understanding and appreciation of the American philosophy of jurisprudence." With such an objective, teaching methods would no longer be concerned to weed out those unfit for law practice, but would seek to encourage all to "understand" and to "stay and try."<sup>13</sup>

On the second score, most of the evidence available to the delegates pointed to the conclusion that the greatest defect in the lawyer's ability to assume his most constructive role in modern society is his inability to think otherwise than "as a lawyer."<sup>14</sup> The Yale paper for the Labor Lawyer panel complained that as "the labor lawyer will play an increasingly greater policy role in the labor movement," he will find that his "casebook training . . . often has little relevance to the problems he faces." It is "possible that lawyers are unsuccessful in many fields because of the nature of legal training with an essentially legalistic view of human relationships." "Lawyers have been excluded from the arbitration of labor disputes in England and also in Canada in cases where one of the opposing parties wishes it. In such matters the case-ridden lawyer is often looked upon as an obstructionist, and it is felt that trained personnel from other fields contribute more to labor relations." Both the Public Life and the International Lawyer panels dwelt on the need for broader horizons in the lawyer's mental processes in order that he may achieve the constructive leadership in public opinion and public affairs that is needed in both the domestic and the international fields. The Rural Lawyer panel echoed this belief that law schools should assume responsibility for training men for public life. For this purpose, and also as preparation for modern private practice, this panel's delegates sought a law course with greater informational content—legal and non-legal. They contradicted the easy assumption that "anyone can look up the law" as applied to complex regulatory, taxation, and government-aid codes to which even small-town businessmen and farmers are subject, and they were equally certain of the necessity for advanced non-legal learning to enable the

<sup>13</sup> See Part I of this Report, 1 J.LEGAL ED. at 87 (1948).

<sup>14</sup> To say that lawyer-like thinking has been given two distinguishable meanings in this argument is only partly to answer it. Of course, the law school's objective is to develop the highest type of reasoning ability, while the criticisms echoed at this Conference are directed against a narrower type of legalistic thinking. The fact remains that the men who exhibit the latter are most often products of law-school attempts to achieve the former. Objectives have not been translated into results and probably have been quite inadequately translated into means.

modern lawyer to understand his client's problems (although they differed as to the role of the law school with respect to non-legal information). And they contradicted the assumption that the "trade skills" of the profession are so easily mastered after law school as to justify failure of the schools to undertake training in them. A law-school objective to encourage able graduates to enter practice on their own in smaller communities, where even low-salaried apprenticeships are not available, would be served by the inclusion of such training in the law-school program. Similarly, the Urban Lawyer panel was told that there are "special abilities," difficult of attainment, "which traditional case-law training does not afford," but which are badly needed for effectiveness in modern urban practice. In particular, "skill in dealing with and understanding facts" and "skill in legal planning" were emphasized by the lawyers who were the Harvard paper's sources of information. While not agreeing on means, the panel acknowledged the needs thus expressed.

The broadened objectives sought by delegates in these several panels may be summed up to include a stimulating training in the most imaginative and, at the same time, most socially useful type of lawyer-like thinking, training in a good many other professional skills, imparting of a greater amount of information, the rounding out of a cultural background, and an undefined element of inspirational content designed to develop a more socially responsible citizen and a more willing, as well as more able, social leader.

In the light of these objectives, an almost impossibly high goal was set for the Teaching Methods panel and for the others which undertook to discuss methods. That the same objectives governed the inquiries which were concerned with curricular and extracurricular content of the law-school program does not obscure the unique difficulty of the task assumed by Teaching Methods panel; it is certainly much easier for a group of students to tell the teachers what subjects they ought to teach than to make constructive suggestions as to how they ought to teach them. An observer, reporting his impressions at the concluding dinner, was convinced that the Conference fell far short of its goal in this respect:

I suggest, at the risk of being a very bad guest, that the felt necessities which you have expressed, the things you want out of law school and feel you did not get, can never be made available to you by the kind of law professor a good many of you say you want. . . . I am convinced by your statement of needs but appalled by your expression of method preference.<sup>15</sup>

<sup>15</sup> Professor Harry W. Jones, in an address at the concluding dinner.

A large part of the discussion in the Teaching Methods panel involved the relative merits of the "case-by-case method" and the "direct lecture method"; the many expressions of preference for the latter "appalled" some delegates as much as it did the observer just quoted. The Western Reserve delegates, authors of a paper for this panel, had made clear their preference for the lecturer, and opened the panel discussion with a summary of their reasons for that preference and their criticisms of the case method. Among their many points, they criticized case discussion as too time-consuming and pointed to lectures as a means of rapid coverage. A delegate in the Rural Lawyer panel echoed this criticism, but without its authors' remedy, and in so doing spoke for almost the entire conference: "I think the case system has great possibilities in teaching one to analyze cases. But it is being misused . . . when it is used to impart information; it is not a very good or very efficient way to impart information." But probably the most telling criticism of the case method was that it fails in its stated objective of stimulating clear, sharp reasoning. "The students drag along in the case system. They just tend to pick out two or three lines in the case and that is the holding; that is all they want and they forget about it." In particular, student recitations of cases were regarded as deadening in their effect on classroom attention and participation. One delegate challenged, "How many students here habitually listen to another student recite a case? If I can get an affirmative answer from the majority of the group, I will be surprised." A minority of one responded affirmatively.<sup>16</sup>

The difficulty lay in finding acceptable alternatives. The "lecture method" that was popular with the Western Reserve and many other delegates was subjected to such heavy criticism<sup>17</sup> that its advocates, in making concessions to one point after another, found themselves proposing little more than the variations many individual teachers have long made on what would still be called the case method. Essentially they asked for greater orientation and integration of subject matter

<sup>16</sup> A Howard University delegate, whose lone response in favor of case recitations was vigorous.

<sup>17</sup> While criticizing the simplification they claimed would necessarily attend resort to the lecture method, and with it the possibility of confusion between the lecturer's "ought-to-be" with the law that is, the delegates inserted a qualification which is a relevant observation on any classroom method an instructor may use. They did not appear to advocate a sterile impartiality on the part of law professors; at least one delegate criticized existing teaching as being too uncolored: "I think the law teacher should play just as important a role in the American law of today as a judge does. . . . The formulation and guidance of the professor respecting the law while you are in school will be invaluable help toward changing any laws that need changing. . . . You should have the policy of the professor injected into the discussion, not only his views on the law but also of what it should do in terms of principle."

by the instructor, while denying that they wished either to shut off the give-and-take of classroom discussion or to have the lecturer "spoon-feed" a substitute for hard-earned understanding. Even for the limited purposes of saving time and unnecessary confusion, opponents suggested that lectures would be an inadequate alternative to the case method. What a teacher thinks can best be taught through direct exposition he can certainly put into writing; in mimeographed or printed form it can be read more quickly than it can be delivered and will remain permanently available. "The invention of type made the lecture unnecessary."

The views expressed on the subject of teaching materials were consistent with the latter criticism of the lecture method. While the advocates of the lecture method made no corresponding suggestion that cases be abandoned as the basic reading matter,<sup>18</sup> others were less conservative, believing that the orientation, integration, and time-saving sought by lecture advocates could be more expeditiously achieved through modifications of the casebook. Several of them seconded the suggestion in the Pittsburgh paper that future teaching materials be modeled, in this respect, on Gellhorn's *Cases and Comments on Administrative Law* or Llewellyn's *Cases and Materials on the Law of Sales*. None would have gone further in departing from cases as basic teaching materials.

The alternatives suggested, particularly in view of the watering down which the recommended lecture method suffered, left a feeling that the panel was accomplishing little more than the airing of many gripes. "We are right back where we started from. We all agree pretty much that the professor should keep right on doing what he is doing . . ." And yet, "Obviously, we are unsatisfied with the system we are getting."

One delegate commended what he called the "problem method" for consideration in the search for more radical alternatives to the heavily criticized case and lecture methods:

<sup>18</sup> Only a Tulane delegate, speaking of courses in codified fields, at all minimized the importance of cases as teaching materials, and then only in favor of the Code provisions themselves, not of secondary materials. In subsequent correspondence with the reporter he adds, "However, even I realize the importance of cases in illustrating the interpretation and development of the Code articles by the courts. It is my idea that the starting point should be the Code, which states the 'general principle' and from which principal cases develop. In contrast to this, as I understand the traditional common-law thinking, the common law starts with the cases and from them develops the 'general principle' (if such a thing there be). Emphasis on the Code as a guide or starting point would be an improvement over the present casebook system, but of course this is impossible in jurisdictions without a well-codified body of private law. So my ideas and suggestions are probably more academic than practical in states other than Louisiana unless and until codes are adopted."

The students are assigned forty or fifty pages of cases and are supposed to bone up on a given subject, and then the teacher, rather than asking them to recite the cases or gather rules from the particular set of papers, will set before them a case which will be set up as if it were a case to be decided by the particular court. The student will be visualizing the case from varying aspects. . . . What would be his approach . . . for the defendant . . . [or] for the opposing point of view? And in the classroom you get this debate between the plaintiff and the defendant.

Response to this suggestion was highly favorable, and the final statement of consensus relied rather heavily on it; but regrettably little discussion was devoted to its fuller exposition or to its relative merits and disadvantages. The fact was that few delegates came prepared to discuss it. Practically no mention was made of it in the prepared papers,<sup>19</sup> and no prior panel discussion was devoted to it. Later on in the Urban Lawyer panel it was stated that a course in Tax Problems at Emory and as many as four courses at Virginia were developed around a somewhat broader, non-litigation concept of the same method:

We are given a problem which [is discussed] over a period of four or five classes, of a man having a business, unincorporated, desiring to form a corporation. We approach it from the standpoint of the various advantages that may accrue, primarily from a tax standpoint, but our instructor constantly reminds us from the legal point of view of the other advantages, and we trace it through. . . . Also we look ahead and see what various situations the individual and the corporation may encounter; decline in business, sudden loss that normally would be unanticipated. It gives a different approach . . . taking a set of facts, not only a present set of facts, but looking into the future, anticipating what may happen, and therefore trying to get the best legal solution to the problem.

A Harvard delegate, pointing out the usefulness of this technique for developing what his paper had advocated as "the capacity for total decision,"<sup>20</sup> went on to "emphasize once more how different the problem is from the problem for which you ordinarily prepare in the law schools, as we have put it in our paper. The law school has emphasized the aspect: Given a certain set of facts, what is the law? . . . Now we are told . . . that the question as it arises in practice is: Given the law, what are the facts? . . . In an already existing situation what facts do you want to emphasize in order to reach the desired effect; or if the situation is not yet existing, what kind of situation are you going to plan for?"

Opposition to the method was equally light. In the Urban Lawyer panel it was objected that the whole effort to develop "the capacity

<sup>19</sup> See note 20 *infra*.

<sup>20</sup> See Part I of this Report, 1 J. LEGAL ED. at 90-93 (1948). The Harvard paper had merely mentioned the "problem method" in passing.

for total decision," including the use of "problem-method" techniques, would be too time-consuming and to that extent inconsistent with the demands for "covering ground" and introducing new matter into the crowded three years of law school. The brevity of both sides of this discussion seemed to illustrate, however, that this suggestion had the merit of novelty, if not in teaching circles, at least among those who were being taught.

The statement of consensus of the Teaching Methods panel on classroom techniques and teaching materials favored (1) retention of much of the traditional case-method instruction in the first year, supplemented by orientation lectures at many points; (2) a modified case-lecture method, itself modified by injection of the problem method, in the second and third years; and (3) the revision of teaching materials to accomplish the desired time-saving and integration through the substitution or addition of authors' comments and excerpts from secondary materials. The prescription of classroom techniques, already not very confining to any teacher who might seek to follow it, was further qualified as being subject to the suitability of any technique to the capacities of individual teachers, or to the subject-matter, and to the needs and abilities of particular groups of students. Essentially, this consensus amounted not to a prescription of desired techniques, but to a proscription of undesired ones—coupled with two affirmative suggestions: (1) that time and misdirected effort be saved by greater teacher direction of the learning process, whether through lectures, outlines, or text materials, and (2) that imaginative innovations be employed in using existing or only moderately modified teaching materials, especially in the upper classes.

Visual aids were discussed separately. Several delegates had come prepared to propose the utilization of visual aids in the teaching of law, citing the successes of such media in accelerating comprehension and stimulating interest in experiments conducted (in fields other than law) by the United States Office of Education and by the Army and the Navy during the war. The Western Reserve paper offered information, including cost data, to show how motion-picture and slide projectors could be used practicably in law classrooms.<sup>21</sup> Owing to lack of time, a proffered demonstration of such equipment was ruled out, and a large part of the discussion (which in total was very short)

<sup>21</sup> A Washington delegate told of work in progress at his school to produce a film, entitled "Trial by Jury," to be used in instruction in trial techniques. And a member of the Harvard Board of Student Advisers reported on the work of his organization in producing a film, entitled "The Case in Point," for instruction in legal research and bibliography. Both films have since been completed and are available for law-school use by arrangement with the respective schools.

may consequently have had a more unrealistic ring than it might otherwise have had.

Although enthusiasts boasted that the teaching of the most abstract concepts could be speeded up by diagrammatic presentation<sup>22</sup>—slides providing a time-saving and artistically improved substitute for the teacher's own blackboard work—a greater proportion of the supporters urged that initial efforts be confined to developing the use of visual aids in presentation of more concrete subject matter, such as trial practice and procedure, research tools, and common forms of various legal documents. One suggestion was that the steps in various commercial transactions, particularly the documents used, could be presented through visual aids in a way that would enhance the students' appreciation of the related courses. Criticism of these proposals centered on the use of wartime and other non-legal experiences with visual aids as evidence of their probable success in law teaching: (1) Army and Navy teaching was directed at men who were rarely as eager to learn the subjects being taught as aspiring lawyers are to master law, and (2) the wartime subject matter was generally of a more concrete and picturable nature than law is. But the critics did not oppose experimentation, at least in the more concrete legal subject matter suggested, and the consensus in both the Teaching Methods and the Rural Lawyer panels, where visual aids had been discussed, appeared to favor such experimentation warmly. It was generally regretted that time had cut off the development of this discussion and the demonstrations of visual-aid equipment.

A final discussion on the subject of examinations rounded out the meeting of the Teaching Methods panel. It can be stated with confidence that examinations are unpopular. It is equally clear that the so-called "objective" examinations are most unpopular of all. True, delegates admitted, the professors claim to have achieved a remarkably high degree of correlation between results on "objective" and on "essay-type" exams; still the objective type does not afford opportunity to exhibit the type of reasoned conclusions which modern—especially so-called "functional"—law teaching purports to develop. Moreover, examinations test more than the student; they should tell the instruc-

<sup>22</sup> "I believe there is nothing in law that cannot be taught by visual aids. . . . Take, for example, the agent and principal relationship, and the principal and independent contractor relationship. . . . On your visual aid you have just a figure of a man here, the principal, and a figure of a man here, the agent, and a long bar between them with the arrow going to the agent . . . and the words, 'supervision, control.' Now emanating from the principal again is a much thinner line going to the contractor, doing the same job that the agent is doing . . . say, they are building a brick wall. . . . On that thin line you merely have the word 'contract' or 'finished product.' . . . There, explained right before your eyes in three minutes' time, you can understand perfectly that relationship."

tor something of the effectiveness of his teaching. Unless subject matter, and not method, is the whole purpose of his teaching, objective examinations will not perform that function. Finally, there is a training function in essay-type examinations, some delegates asserted; training does not end with the last class and the midnight review session. A reasoned conclusion, to be an effective lawyer's tool, must be accompanied by persuasive expression of its reasoning, and too little practice in such expression is offered in law schools outside of examinations.

Only a small minority rejected the unstated premise of the preceding discussion: admittedly examinations are evil, they challenged, but why assume that they are a *necessary* evil? Are they really necessary to measure student achievement and to stimulate best efforts? Could not these two results be equally achieved through writing requirements in each course, or assignments of problems comparable to the questions in an essay-type examination but with a period of, say, three weeks in which to prepare them? Do examinations really measure legal ability and subject-matter absorption? Are they not wholly unlike the bulk of the work done by a modern lawyer? Do they not measure instead a wholly different ability—the ability merely to write an examination? Law-review men, it was asserted by this minority—the core of which seemed to be a group of editors of the *Columbia Law Review*—are notoriously successful in examinations for courses in which they have never attended a class and have only slightly concentrated on the course material. Their questions and assertions were stimulating, but the limits of individual experience led to an exceedingly cautious welcome for them. A crushing blow was delivered against this minority when the panel was reminded that boards of bar examiners still regard examinations as a *necessary* evil; however much the art of writing examinations may be a factor independent of legal ability, so long as a bar examination remains the condition precedent to a license, law schools ought to provide an opportunity for mastering that art.

The hour was late, and there seemed to be adequate opportunity in law-school dormitories to grip about exams. It is hard to report that anything very conclusive came out of this brief discussion, except that examinations are unpopular, objective examinations are more so, but even the consumer is as yet unsatisfied that this evil is not a necessary one.

## IV

## CONCLUSIONS

A final section devoted to the conclusions of the conference would be redundant in a report that consists so largely of such conclusions throughout its text. I do not propose simply to repeat those conclusions here; this section is instead an indulgence of a desire to remark on points which seem most representative of the views of the entire Conference although they were made only in individual panels and without opportunity for later adoption or rejection by a meeting of the whole. This singling out of "significant" conclusions is done on my own responsibility; the section states, therefore, not the conclusions of the Conference, but mine on it.

Throughout the individual panel meetings there is a core of central ideas which, coming as they do from individuals of varied backgrounds, contain apparent or potential contradictions of other equally central ideas. I have found that my list of these potentially contradictory conclusions contains substantially my entire list of "significant" conclusions. I am sure that many delegates were conscious of and disappointed in what they saw as inconsistency, and shared the feeling of Professor Harry W. Jones<sup>23</sup> that an entirely new approach to ways and means will be required if the Conference's stated aims are to be achieved:

As I read the record of your Conference, the consensus . . . is that your law schools, by and large, have afforded you inadequate opportunities in three major respects. You feel now that you are insufficiently experienced in professional skills other than the skills of case analysis and synthesis which are the essential products of the case method of legal instruction. . . . The second count in your indictment is that present law school programs give you insufficient opportunity for preparation in specialized fields of the law, like labor law, international law, taxation, patents, and the like. . . . And finally, to repeat the point stated by Mr. Garrison in his keynote speech of yesterday morning, you all feel a need for greater recognition in law school planning of the full implications of the lawyer's role in public affairs. . . .

And yet, there is an essential contradiction which, I think, can be seen running through the record of your discussions. The objectives of legal education you see in very broad-gauge terms, but your approach to law-school teaching methods is very conservative. You are in agreement that a lawyer who cannot write clearly, or speak effectively, or read a corporation balance sheet, is very poorly equipped for service in his profession, and yet the weight of your opinion is against the establishment of a *required* pre-legal curriculum, which would compel the law

<sup>23</sup> Professor Jones, as a visitor to the several panel discussions, undertook to "report informally . . . the impressions of an average law professor" in an address at the concluding dinner.

student to develop these essential abilities before he addresses himself to the law. You are concerned about the failure of the law schools to give students the opportunity to develop a wide range of professional skills, and yet your majority inclination is against the *requirement* in the law school program of courses taught from an approach which is designed to develop those skills.

You are all for the offering of policy-making courses—as if *any* course effectively taught by the case method is not a policy course—and yet you would have such courses offered on an elective basis. Above all, the clearly expressed preference of many of you is for the kind of law teacher who *gives* you, by supplementary lectures and comments, a “broad over-all view” of particular fields of substantive law. I had thought that no one would have a good word for the professorial *lecture*, at any stage of legal education. If a professor of law feels that he has an introductory comment or a concluding synthesis which will enable you to cover more material more effectively, why shouldn't he write it out, have it mimeographed and distributed, and use the heart-breakingly few available hours of classroom time to go on from that point in free discussion?

. . .

In short, I am convinced by your statement of needs but appalled by your expression of method preferences. . . . One or the other you can have, but only one. My suggestion now is that you consider the kind of law-school program and instruction which would be necessary to turn you out with the skills and awareness of social issues for which you have expressed a desire at your panel discussions.

This imagined law school of which I speak is based essentially on the principle of Archimedes, that there can be no addition to a volume without the displacement of a certain quantity of that which is already there. . . .

I suggest, in the first place, that it will be required of *all* applicants for admission to this expanded law school that they have completed a hard core of required pre-legal courses, including heavy concentration on English composition, elementary public speaking, accounting, logic, economics, and constitutional history (in the sense in which English lawyers use that term).

Assuming this adequate common background to exist at the very outset of the law-school years, our more comprehensive law school could and would devote no more than the first year to conventional case-method analysis and synthesis. . . . A course something like the Columbia course in Legal Method would be assigned responsibility for your basic methodological preparation in case and statute reading, and the other first-year courses would be given to a comprehensive application of those methods to appellate-court materials bearing on the fundamental legal concepts of torts, contracts, and the like.

But there is no time to waste, and the informational content of these first-year, case-method courses would be greatly expanded. Contracts would have to include the basic concepts of Sales, Bills and Notes, and Agency. Torts would incorporate most of Trade Regulation and a good half of Equity. Constitutional Law would give you your only case-method coverage of fields now splintered off as Administrative Law, Federal Jurisdiction, Legislation, and the like.

It will thus be assumed that the first year will have given sufficient training in case analysis and synthesis and adequate knowledge of the

basic concepts of substantive law. All substantive-law courses throughout the second year will be taught not according to conventional case-discussion method, but by means of problems—and by *problem* method I do not merely mean the posing of hypothetical cases of analysis and discussion in the light of assigned appellate decisions. By problem method, in this sense, I mean, for example, that the substantive law in a particular field, say insurance, might be presented by class performance of a significant legislative research and drafting problem in some difficult insurance problem; pleading, trial practice, evidence, and appellate procedure might be covered by the practice-problem method, in which an assigned case would have to be prepared, pleaded, tried, and appealed by second-year students. . . . The emphasis throughout would frankly be on skills, not on knowledge.

As for the third year of this law-school program, my suspicion is that it would seem very much like the present graduate study year at schools like the Columbia, Harvard, and Yale law schools. The emphasis throughout would be on individual research work. The desire you have all expressed to have time for specialization would be realized by faculty liberality as to permissible research assignments. All class discussions would be by the seminar method, with each senior lawyer's findings subject to criticism by his fellows in related fields, and with each man's critical faculties sharpened by experience in criticism of other men's work.

. . .

I have not said, and I do not say, that the above would be my personal prescription for a law school in the year 1947. My point, again, is that that is the only kind of law school that could possibly develop the variety of skills you feel you need, and my further suggestion is that after the first year in that law school you would get practically none of the patient classroom assistance which many of you now think of as "good teaching."

What differences there are between Professor Jones's list of central conclusions and the one that follows are probably only a function of the differences in our respective opportunities to examine the record of the proceedings.<sup>24</sup> But at one point, I feel, the differences should be pointed out. While it is true that many delegates expressed a preference for the "professional lecture," it is not true that the mention of "lectures" in the consensus of the Teaching Methods panel represented a desire for "the kind of law professor . . . who takes you by the hand through the dark forests of the law and comforts you with presumably authoritative pronouncements designed to make the law seem less demanding of labor and artistry than it actually is." Although the motives for including the lecturer in that consensus were varied, it is my conviction that search for a more efficient means of imparting information than the traditional case method was chiefly

<sup>24</sup> Professor Jones of course had no opportunity to examine a transcript of the proceedings before making his address. Moreover, since two or three panels invariably met concurrently, he was not even given a sporting chance to gather the separate panel conclusions from direct observation.

responsible. (Thus text notes, outlines, and visual aids were also included.) A limited retention of the case method was also advocated for the purpose of accomplishing the fundamental case-analysis function usually assigned to it. At the same panel, it is to be noted, the undeveloped suggestion of the problem method fell on remarkably receptive ears. And the suggestions of the Craft Techniques panel regarding teaching methods for training in lawyer skills were mostly problem-method ones.

My list of the potentially contradictory conclusions is:

1. A demand for practical training and for a great deal more information about rules of law, on the one hand, and a demand for a more philosophical approach—the integration of law and the social sciences and the study of social “values” as the ultimates which law exists to implement—on the other;
2. A demand that professional training remain confined, as it so largely is, to three years of undergraduate study and three years of law school, in which should be covered all the subject matter necessary to prepare for a bar examination, on the one hand, and the innumerable demands for additions to the curriculum, on the other; and
3. An open-door policy on admissions to law school (and to the profession) demanded on the one hand, and professional employment with a decent financial return for all law graduates, on the other.

In evaluating the individual conclusions contained in this list, it is, of course, only fair to bear in mind that many different ideas were presented to the several panels by persons of quite diverse background and outlook. Those intending to practice on their own were more insistent on informational courses, while those expecting to find employment in law offices, government, or industry were more willing to sacrifice legal information for the philosophical approach and the “higher” type of professional training; those who attended “state” law schools seemed more conscious of bar examinations than those who came from “national” ones. It is not necessary that the conclusions of so many different individuals and groups comprise a wholly integrated and coherent body of suggestions for the Conference to have been a useful guide to consumer reactions in the law-school world. The student bodies of different law schools are differently constituted—especially as to the locality of intended practice of the bulk of any one of them—and the individual schools may be expected to accommodate their aims, curricula, and techniques to such differences.

Moreover, it is not necessary that each conclusion be accompanied by blueprints for the work of the Conference to have been useful. At some points the delegates expressly acknowledged what they felt to be the limits of their own competence, and left unresolved many large questions about ways and means. At others the acknowledgment

was implicit. To the extent that the potential contradictions just listed arise out of apparent limits imposed by practical considerations such as time, it may be a sufficient answer that feasibility was not really the problem of the delegates, that definition of objectives was.

But each consensus was the result of conscious effort to reconcile different points of view (including views controlled by considerations of feasibility), and the panel chairmen would be justly disappointed if their attempts at reconciliation were completely disregarded. Moreover, the schools on which the Conference's demands are made seek generally to do more than merely prepare men for a local practice in those communities to which the bulk of their students may intend to go. Did the panel chairmen fail so completely? Do these student wants have any relevance for the more ambitious schools?

Consider the first two conflicts listed; both are premised on the assumption that the addition of certain objectives to the law curriculum must necessarily be at the expense of certain others. In addition, the first—the conflict of the practical and informational against the philosophical—assumes that either one or the other, but not both, is properly the function of the law school; the other may be better obtained elsewhere. I suggest that both assumptions are wrong. The conflict of competing demands on the curriculum is perennial, but one can claim no novelty for suggesting that the introduction of some practical training may aid in the acquisition of that perspective which is the object of the philosophical approach. Similarly, the filling of philosophical vacuums may make the acquisition of information and the learning of skills more rapid.<sup>25</sup> To the extent that they assist each other, moreover, it cannot be true that either one, to the exclusion of the other, is the proper function of the law school.

The second contradiction is more completely one of competition for time; within the limitation of the traditional three-year law course (which was almost unanimously adhered to by the delegates) a conservative group, which demanded complete coverage of courses on which the bar examiners will examine them, alternately dominated the panel discussions and was dominated in them by a more radical group, which thought less of such coverage than of a number of specific proposals for additions to the curriculum.<sup>26</sup> As a result, statements of consensus

<sup>25</sup> The question, as one delegate put it, is "whether we can feasibly study . . . law in the abstract; whether we can study without an understanding of the values upon which the community's legal system is based, upon factors such as that of the economic and political surroundings of the country." In his opinion, the "practical," "bread-and-butter" answer to that question was, in reality, quite impractical.

<sup>26</sup> Each suggested addition to the curriculum might, of course, be viewed as also raising a potential conflict with any other on the score of which is within the "proper function" of law-school training. For instance, the demand for additional

advocate the introduction of far more into the three-year program than seems even remotely feasible, if the items demanded by the conservatives are retained. Condensation of many existing courses and streamlining of teaching methods were suggested in order to accommodate both points of view. But many of us felt that the demands far exceeded what even these suggestions could achieve by way of accommodation. This defect on the score of feasibility inclined many to adopt an "either-or" attitude toward the resolution of this conflict. My thought is that their consequent disappointment in the Conference for its failure to resolve the conflict is needless; although each suggested objective cannot be exhaustively pursued during the period of three years, there remains, I suggest, room for exploration of the advisability of pursuing each as far as possible. It may well be the best utilization of the three-year period to make such training as it allows as representative as possible of the varied demands that are likely to be made upon the lawyer in the course of a professional career. That the Conference itself did not resolve the conflict should not be disappointing if it performed the function of inviting resolution by those better qualified to achieve it.

Adherence to the three-year limitation was part of a consistent "open-door" policy with respect to the opportunity to study law which reflected the views of almost the entire Conference. Can the open door be reconciled with the views of the Placement panel on law-school responsibility for placing law graduates? The panel thought so, and its conclusion involved the imposition of a peculiar responsibility on the law schools, beyond that of grubbing for jobs when they are found to be scarce. It asked the schools, as I interpret its consensus, to assume in concert with student organizations the task of carrying the torch for the special interests of aspiring lawyers in freedom of career against an economy that is becoming ever more restrictive and special-interest-minded. When the bars of some states refuse admission to qualified law graduates because the profession is overcrowded (in the opinion of the profession), it is the law schools that can bring institutional representation to the cause of the excluded and about-to-be excluded individuals. When the cost of legal services is raised beyond the reach of middle-income clients, it is they who can do more than individually cry in the wilderness for organized and legitimized lawyer's reference plans and neighborhood law offices to bring the unemployed legal talent and the less-than-wealthy client together. The Placement panel faced the

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non-legal information might be said to raise a conflict on that score with the demand for retention of those "bar exam" courses. But I believe the "proper function" conflict between such suggestions is not so independent of the "limited time" one, in the minds of those who assert the conflict, as it is in the conflict of the practical and informational against the philosophical, discussed in the preceding paragraph.

dilemma which its open door created, and it made suggestions. Perhaps the suggestions will not resolve the dilemma; one might reject the profession's criterion of overcrowding and yet anticipate an eventual plethora of lawyers if every aspirant who can meet current standards is admitted. More than it relied on its own suggestions, however, the panel expressed a faith that, if people who need legal services do not find them within reach and yet lawyers are unemployed, a remedy can be fashioned by men. If the open-door policy should lead to the remote possibility of more lawyers than even the fulfillment of that faith can employ, the panel may perhaps be forgiven for failing to anticipate it.

Those are, I believe, the ideas which were central in the Conference's discussions. Do they really dodge the issue that is probably the most difficult facing legal education today, of how law schools may contribute to the development in their graduates of an adequate sense of public responsibility? It seems to me that Dean Griswold was justly disappointed in noting that this matter 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."<sup>27</sup> The problem is one which, by comparison with several that received much greater attention, law students ought to be especially well qualified to discuss. In view of its special importance and its elusiveness of solution, at the very least a whole panel might have been devoted to it.<sup>28</sup>

But several delegates addressed themselves to that problem. Some made suggestions in a context in which it was not clear whether they were concerned solely with the skills and knowledge necessary to the discharge of public responsibility, or with both these and a sense of responsibility in the exercise of such skills. Where the discussion was concentrated on responsibility, different panels concurred in reaching at least a negative conclusion—that indoctrination efforts of a super-Sunday-school type, especially in a course on Legal Ethics, would be wholly ineffective. But they seemed to feel that they were floundering in the attempt to make affirmative suggestions. Attitudes shown by instructors in any courses, some thought, were important; some instructors seem to suggest, by their attitudes toward the situation involved in a case under discussion, that "what you can get away with" is the test that would guide their own conduct in a like situation and that that is therefore to be assumed to be the accepted test among members of the

<sup>27</sup> See his Foreword to this Report, 1 J. LEGAL ED. 64, 66 (1948).

<sup>28</sup> I confess I did not go to the Conference imbued with a feeling that this problem was one of special importance, nor did I recognize the special competence that I now assert of students to inquire into it. It was Dean Griswold's expression of disappointment which prompted my review of the panel discussions touching the point, and for that reason my conclusions may be as unreliable as those of anyone who has searched, not for whatever he may find, but in order to find something.

profession. Contrary attitudes can lead to opposite assumptions. But greater faith seemed to be put in the suggestions for broadening the student's perspective about law; one paper urged a requirement that every student take a course in Jurisprudence as a means of fulfilling the schools' "obligation" to "awaken moral and social responsibility" in their students. More frequently it was suggested that the acquisition of a broad social-science and philosophical background in pre-legal work, the integration of further appropriate non-legal material into law courses, and the conscious study of law in terms of the detailed and competing social values underlying it, be relied upon to give that perspective.<sup>29</sup> It might have been added that even the purely practical "trade skills" discussed at the Conference can enhance perspective when taught in a context of other perspective-inducing materials.

Undoubtedly these suggestions fall short of exhausting the possibilities; evidently the delegates who made them felt that they did. But I believe that especially the latter ones, which I have warmed over so often in this Report, justify an assertion that the delegates may have been unduly dissatisfied with themselves; that the Conference, despite its failure to single out the topic for independent treatment, came out with useful suggestions, whatever plurality of motives there may have been in their adoption. A man of law-school age will have passed the most formative stage of his character development, and will have already acquired those basic attitudes on ultimate values that men take on faith or intuition rather than on knowledge. But conflicts among men of relatively homogeneous backgrounds arise not so much out of differences on ultimate values as on intermediate ones, and anti-social attitudes and conduct engendered by such conflicts may be lessened by the sort of education which, while not removing even the lower-level conflicts, produces

<sup>29</sup> These suggestions had been made in several different contexts. See Part I of this Report, 1 J. LEGAL ED. at 85-86, 90-97 (1948). But it is interesting that all of them were repeated in the panel which might have been expected to dwell most on this sense-of-public-responsibility issue—the Public Life panel. (Its discussions have been largely neglected in this Report because of that repetition.) Unlike some of the other discussions, however, those in the Public Life panel did not make explicit whether they were addressed to the purpose of developing attitudes as well as that of developing knowledge and skills. Of course, the panel was in part concerned with the problem of inducing law graduates to seek responsible positions in public life, an object which seemed to it to require the development of a high sense of public responsibility. And the paper of the Pittsburgh delegation posed the problem of finding a substitute for the professional sanctions which govern a lawyer's conduct as counsellor, advocate, officer of court, and judge—a substitute that would similarly restrain antisocial conduct when the lawyer serves in a non-professional capacity as legislator or other public official. But these two problems are narrower than the challenge expressed by Dean Griswold. And unless it be assumed that the suggestions expressly directed only to the imparting of knowledge and the training of skills were implicitly intended to meet these two problems as well, it must be said that the panel left even them untouched.

a perspective which enables men to see the common goals through the haze of lower-level conflicts. In short, the liberal education which has long been the object of the undergraduate schools offers the best prospect now in view for quickening the socially desirable impulses and attitudes that earlier backgrounds have created. If adding merely a technical training to the college's effort to educate liberally has failed to produce men who are more than mechanics of the social order, it seems possible that continuation of the effort to educate liberally—a continuation which is somewhat compelled by the college-taught dogma that liberal education must continue throughout life to be liberal—will serve to develop both the sense of responsibility necessary to constructive leadership and the man "splendidly equipped in the skills of his profession," capable of exercising that leadership.

Finally, let me return to the obvious. Many have remarked that the very fact of this Conference has manifested a student interest in the aims, techniques, and subject matter of legal education which might be put to many uses. One of these interests me especially. Teachers of law will undoubtedly observe the several points in the reported discussions at which students dwelt on ideas for improving legal education wholly unaware of how extensively the particular suggestion may have been debated in teaching circles and even tested in some schools. Perhaps this only emphasizes how futile student tinkering with this subject is. But perhaps it also suggests that the prior debates may have been among too narrow a group. If, as may occasionally have been the case, the very device was tried on these students without destroying the illusion of novelty with which they later debated it, an opportunity may have been lost in the failure to set forth the objects of the experimentation at the time it was done. If the experiment was regarded as less than successful, perhaps the fault lay in the failure to take the guinea pigs into confidence. Throughout my very recent law-school career I have carried the impression that if my classmates and I could only have known toward what end each classroom discussion was directed—for what purpose each question by the teacher was asked—we might have acquitted ourselves less in the manner of the "damn fools" that the beloved "Bull" Warren so accurately called us. Many of us left the Conference with the feeling that its greatest contribution could be to ourselves as "participants," and to the other law students as "consumer" participants in the business of legal education. In the language that Professor Jones addressed to us, "It provides a basis for seeing yourselves, your law teachers, and your three years of formal legal education in proper perspective. What is it that you hope to gain from your three law-school years, and to what extent can these desired attributes, skills, and values be

developed in you by formal education, specifically by three years of professional *legal* education?" Some of those who returned to the classroom have asserted that they experienced the benefit of this perspective there. If we were right, we have perhaps supplied the best reason for the existence of the Conference's Continuation Committee and its efforts to resolve the many issues which this meeting left unresolved.<sup>30</sup>

<sup>30</sup> A Continuation Committee composed of Wisconsin Law School delegates, with Mr. John M. Potter of that school as Chairman, was appointed after the concluding dinner.