

BOOK REVIEWS

A Series of Reviews of

LEGAL EDUCATION IN THE UNITED STATES. By Albert J. Harno. San Francisco: Bancroft-Whitney Co. (Survey of the Legal Profession), 1953. Pp. 211. \$3.50.

INTRODUCTION

A major survey of legal education in the United States deserves the very thoughtful consideration of anyone concerned with professional training for the law. Dean Harno's history and evaluation of legal education in this country under the title *Legal Education in the United States* falls in this category. The importance of the subject and of the book commends the wisdom of the editors of the Law Review in having the volume reviewed by four different persons. In this way we are afforded the benefit of the observations of a trial judge, a business executive who has been a teacher of International Trade, a practicing lawyer and a law school dean.

The reader will find that all four reviewers have placed a favorable evaluation upon the volume. It is clear that Dean Harno approached his task with commendable objectivity; one does not discern any indication of a defensive attitude with respect to the criticisms of contemporary American legal education with which most of us are familiar. In fact, there is more that could be said on the positive side than Dean Harno has brought out in this compact study. Just to take a single example, one might refer to the lively interest which has been displayed by a number of law schools and by the Curriculum Committee of the Association of American Law Schools in the subject of curricular integration. In its very nature, curricular planning, in such terms, is comprehensive and not to be characterized as the piecemeal sort of thing which Dean Harno finds more prevalent. For added measure I invite attention to the large-scale collaboration in the preparation of materials for instruction in Labor Law, which had its inception in the Labor Law Round Table of the Association of American Law Schools and which has achieved fruition under the leadership of Robert E. Mathews. That is a notable example of high-level law teacher-practitioner effort for the betterment of legal education.

Our practicing attorney, Mr. Arch Cantrall, is well known as a severe critic of contemporary legal education. He has set out in his review a "practitioner's prescription" for improving the situation.

The most important thing which can be said in a brief introductory statement is that there is a very heartening interest within and without law schools in improving legal education. Careful stock-taking and re-examination of objectives are very much in order, and it is the impression

of this schoolman that law teachers generally are concerned about doing a better overall job, whatever the quality of program and performance in a particular school may be at the present time. It is significant that practically all of the criticisms which Dean Harno has discussed are self-criticisms. It remains to match humility with the vision and zeal required for constructive action on a broad front.

Jefferson B. Fordham †

A LAW SCHOOL DEAN'S REVIEW

Legal Education in the United States is an invaluable book for anyone wishing to have in readily available form the broad outlines of the history and growth of professional law schools. It is a most valuable essay also on the present status of legal education in this country. Dean Harno recognizes the twofold criticism which law schools today must meet; that is, that they are not sufficiently practical or that the curricula are lacking in breadth. These criticisms are not necessarily inconsistent and both may be valid. Dean Harno emphasizes that this is a period of self-criticism for the law schools and of much "activity and ferment" within them. He notes the growth of tutorial programs alongside the case method, the movement to bring legal education into closer contact with the social sciences, and the beginnings of factual research programs, which in some instances have resulted in completed studies. He mentions the recurring agitation concerning appropriate prelegal programs and the failure of the law schools to establish prelegal requirements other than in terms of years, the failure also to solve the problem of the teaching of ethics, and he notes that the approach of the schools to the solution of their problems has been usually "piecemeal and not comprehensively." According to Dean Harno, soul searching of a more comprehensive type is almost "nonexistent among the schools . . . but a minor fraction of them even have committees on curriculum . . . only a pitiful few have committees on aims and objectives." "This situation in the schools," Dean Harno concludes, "shows a major weakness in legal education."

Quite properly Dean Harno takes a broad view of his subject. His essay is not a report of an intensive examination of any one school. He is dealing with a nationwide institution of legal education, and he is concerned with general characteristics and problems. Moreover, and this is particularly appropriate for a book prepared for the Survey of the Legal Profession, one frequent point of reference in the volume is the Bar's concern with general standards for prelegal and legal education, and these standards inevitably have to take legal education in the broad as though it were one institution. But as Dean Harno surely would agree, professional legal education—even university legal education—is in another sense

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not one institution but many. The present ferment, as he notes, has produced many variations among the schools. Some schools indeed, including the one with which I am connected, have gone after curriculum problems most comprehensively. This apparently is one important variation which probably is duplicated in the same or in other ways in diverse schools. If law schools are taking advantage of their abilities and opportunities, there should be more than incidental variations between schools and, for that matter, within a particular school, when different periods of growth are compared. If major variations do not exist, then it would seem that an additional criticism can be levelled at legal education; namely too great conformity to a standard model. An intensive study of a few institutions might reveal whether or not there are useful variations.

Perhaps there is a problem of too great conformity and standardization. If so, the case method may have contributed to this result. Dean Harno speaks of the case method as a "system of instruction which in the hands of an able and skillful teacher is unexcelled as an instrument of education," and most of us would agree. But the attractiveness of the method has made other innovations more difficult. A more fundamental reason is probably the natural desire to settle what are, at bottom, somewhat intellectual matters through majority decisions, whether this be within a school or within an association. One consequence of this is an approach to the problem of legal education on what appears to be the incorrect basis that changes, if they are to be introduced, must come in many schools at once, and perhaps even through coercion. This seems somewhat odd in a society which still has a fairly fundamental belief in free enterprise. Nor am I sure that it can be argued successfully that uniformity or coercion is required, because in education the bad methods drive out the good. When serious changes are proposed in legal education it would be unfortunate if a rigid conformity requires the experiment to be imposed on all, or not to be tried at all. Legal education requires flexibility, and proposals serious enough to be urged on all perhaps, at least, should first meet their test in one or two places. This may have a certain relevance to the problem of legal clinics and also, perhaps, even to the problem of prelegal subject requirements.

Dean Harno is certainly correct in his description of the present period as one of self-criticism for the schools. Self-criticism sometimes leads to an exaggerated emphasis on method, on the curriculum and on purely institutional arrangements. Those who have lived through inquiries into method and curricular changes may be permitted to doubt whether any utopia comes much nearer in this exaggerated way. Perhaps what we need instead are fairly quiet experiments and innovations accomplished by those who have faith in them. Self-criticism, in any event, should not obscure the accomplishment of the law schools in this country in developing a disciplined liberal education for a profession of leadership. This accomplishment is very much in the tradition of the early distinguished professors of law who sought to find a place for law within the framework of the

universities, and the result today is the work of a great many dedicated teachers of law. The difficulties, of which we are all aware, should not dim this achievement so well reflected in Dean Harno's history.

Edward H. Levi †

A BUSINESS EXECUTIVE'S REVIEW

"Americans, even before the Thirteen Colonies established their independence, were and have till today continued to be a nation of lawyers. . . ." ¹ This quotation from Dicey on Blackstone, written in 1932, is an unhappy assumption and not a true one. It would have been more gracious as well as more accurate had Dicey written of us as a nation governed by laws and not by men. But even though the Dicey concept seemed from time to time to be part of the author's own thinking as well as that of many whom he quotes (perhaps that is in part due to their pride of profession—I would be neither unfair nor harsh), Dean Harno has written an interesting, provocative and stimulating treatise on legal educational problems and doctrines, and the position and functions of the lawyer in our society.

This is not an easy book to review. It is compact and meaty—covers almost two hundred years of history and also sets forth comprehensively the many educational problems and conflicting solutions proposed by educators and leaders of the Bar. And, if I found it weighted at times on the side of the greater importance of the legal profession and the lawyer over the rest of us, and if I felt certain lacks or omissions, I also found much objectivity in Dean Harno's critical comment and in his presentation of conflicting thoughts and attitudes. But, the survey covers so much ground that any review will be the selection of points that interested the reviewer most and struck him most forcibly.

Even in a nation governed by laws, it is generally recognized that the law is not all-powerful, and perhaps it would be well to consider briefly what the nature and functions of laws are before dealing with the work of the lawyer and what his responsibilities are. To what extent should laws be regulatory? To what extent should laws be opportunity-giving to all citizens? To what extent are laws needed for the protection of all citizens? What are the laws needed in a free society to give opportunity to all, preventing the exploitation of any? Over the last twenty years there has been the debate over whether social and economic progress can be accomplished through changing legislation and the passing of new statutes, or, whether new laws are both futile and unwise without concurrent education and

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1. HARNO, LEGAL EDUCATION IN THE UNITED STATES 9 (1953).

resultant acceptance of the underlying purposes of the laws by the public. This has been particularly true in the debates on proposed legislation to end racial discrimination and segregation. And, it is my own thought that we need both the proper laws as well as the education of our people in order to achieve the ideals that we have set for ourselves in the American democracy.

As I am not a lawyer, I may well have my prejudices and predilections as to contributions made by lawyers and contributions made by other elements in our society such as businessmen, trade-union leaders, physicians, ministers, engineers, teachers and others to the welfare of our nation. On the economic front, I think that the prime and basic responsibilities lie with those who have most to do with the means of production and distribution. They are, specifically, business owners and executives (including farmers) and trade-union leaders. And their responsibilities are assuredly greater in a private enterprise or a capitalistic economic system than those of the other professions. Unhappily, neither the businessman nor the trade-union leader has recognized his great responsibilities to the public welfare and he still thinks and acts within too narrow confines on behalf of his own company or his own trade-union. But I feel that there has been some progress made over the last twenty years in broadening the horizon of those who have the more important economic management jobs, and I would hope that their sense of responsibility continues to grow beyond the profit margin of the enterprise or the wage of the employee, to the economic welfare of the whole.

In addition to the material prosperity of a democracy, there are the political privileges and rights of all in a republican form of government and the civil liberties of all which are the very essence of democracy. In these fields all professions and occupations have equal responsibility for policy thinking and policy determination. It is just as important for the physician, the minister, the teacher, the trade-union leader and the business executive as it is for the lawyer to be imbued with the ideals of our democracy and to work for putting those ideals into practice.

It is true that to some extent we, in the United States, have leaned on lawyers for guidance and direction to a greater extent than has been the practice in Europe where the role of the lawyer has probably been more that of a legal technician and not the dominant role that Professor Leach, whom Dean Harno quotes, would arrogate to him:

"1. To assume direction of all phases of the areas of personal conflict inherent in a complex society and economy. They must be advisers, negotiators, advocates, judges, arbitrators—and frequently administrators and executives having a large amount of quasi-legislative power . . .

*"2. To provide a very large proportion of national leadership at all levels of authority.'"*²

2. *Id.* at 124. (The italics are those of Professor Leach).

I would go along with the more limiting statements of the California Board, the Harvard Law School Committee and Dean Wright of the School of Law of the University of Toronto³ who seem to me to be well and properly agreed that a legal education should develop lawyers to become sound legal practitioners, able to care adequately for the problems of their clients, and also to have an interest in the welfare of our society and, therefore, in improving the laws which keep it integrated.

These responsibilities and functions place the lawyer in a position somewhat apart from the other professions in that the lawyer not only participates in the making of policy but also interprets the existing laws for us and drafts the new laws that are needed. To that extent we thrust upon the lawyer the added responsibilities of legal advisor and legal draftsman, but it does not make of him the superman implicit in the Dicey concept and the Leach statement.

In commenting in the early pages that, "The structure of American law is erected on the foundations of the English common law"⁴ and that, "In the great Continental centers of legal learning, law was taught as a science and in the setting of its interrelations with the humanities and the social sciences. The emphasis in English legal education has ever been severely practical,"⁵ Dean Harno has given a background and a basis for our attitudes toward legal education and the interpretation of laws as well. For, as he further states, English common law is judge-made law, and judge-made law proceeds from a series of judicial decisions. Indeed, judge-made law may well have been one of the basic reasons for Blackstone's failure in his attempt to create law schools in England and for the fact that there was only desultory progress in the development of university law schools in the United States during the first half of the nineteenth century. Also, if we look to judicial decisions of the past—even the recent past—as a basis for deciding what the judicial decisions of the future are likely to be, it is understandable that office-apprentice training would be preferred by many.

But beyond this I think that there are other factors in what Dean Harno considers the all too slow growth of American university law schools. In reading the historical background, it seemed to me that those of our eastern universities that established law schools during the late eighteenth and nineteenth centuries did exceedingly well. They attracted many men of stature who were genuinely interested in the philosophy of the law, in teaching, and whose approach was a broad interest in the problems of the young republic struggling for growth and maturity.

That university legal education could not spread westward as rapidly as did our population is only natural. The backwoods west of the Alleghenys, through the Middle West, and down through the Central South, could best produce the office-apprentice lawyers, the group that is some-

3. *Id.* at 123, 124.

4. *Id.* at 15.

5. *Id.* at 4 (The Author's footnotes are omitted throughout).

times referred to as the Abraham Lincoln type. And I wonder if it is not more than an accident of the legal profession and of legal education that the great impetus in the expansion of university law school education did not come about until 1870 when Professor Langdell created the case method. Was it the case method alone or was it the beginnings of the new economic and political growth of the post-Civil War period?

In any event, Dean Harno seems to think that the case method was the greatest single contribution made in the nineteenth century to the expansion of law school education and to the creation of new law schools, and that it also did more than any other single thing prior to that time to focus the thinking of the legal profession upon teaching methods as well as upon the content of the curriculum. Assuredly, the case method has much to commend it, and skillful teachers are able to give their students a feeling of the underlying philosophy of the law, and of the underlying philosophy of the times and of our needs, as well as teaching them case analysis and legal precedent. I have, to some extent, used it in my teaching of business courses but found from my own experience as well as from observing its use by others that a combination of lectures, classroom discussion of principles and policies, and a study of individual cases gave the best results. In the teaching of law, it would be my thought that the classroom should first give the student an understanding of what the law is all about, of what laws should do and can do and then to show, by the example of well-selected cases, how laws have been interpreted and the considerations that determine judicial opinions and conclusions.

But there is a grave danger in the case method which is also inherent in a law system based on the judicial decisions of the past. If our thinking, our studying, and our teaching are predicated on what our predecessors have decided is sound and proper, there is the danger that we ourselves become static in our thinking and are, therefore, unwilling and unable to be dynamic in our actions. And as ours is a changing society, there is the continuing need for those in positions of leadership and of responsibility to think in terms of what must be done to meet the new and changing needs of a people. To instill in the student—whether it be for the law or for any other occupation—the spirit and courage of the times and their needs is a basic duty of the teacher.

In writing of the American Bar Association, its interest in and relationship to legal education and its relationship, in particular, to the Association of American Law Schools, Dean Harno has shown clearly and well the conflicts within the Associations and the slow evolution of ABA educational policy. And while I recognize the important contributions made since the founding of the ABA in 1878 by those leaders of the Bar who interested themselves particularly in the committees that dealt with educational problems and with the standards for admission to the Bar, I also felt a desire on the part of the ABA to dominate legal education which might well have brought about greater regimentation in our teaching methods as well as in our thinking. I fully agree on the need for adequate

prelegal education as well as on the gains accruing to any young man or young woman who can have the benefit of three years in one of our great university law schools. But I would be fearful of cutting off the young lawyer who could go only to the small or part-time law school and who would perhaps have some office-apprentice training at the same time that he was going to school. Character and ability are helped by sound educational methods; they are not caused or produced by them. And, also, I am reluctant to accept, as Dean Harno seemingly does, the ABA system of approving of some law schools and of withholding approval from others. (He does not write of the attitude of the AALS toward ratings by the ABA.) That should be a function of state boards of regents which would, I hope, think in broad terms before refusing to accredit a school because its facilities were not as good as those of a great university. Also, I have some concern about the Elihu Root resolutions that were adopted by the ABA in 1922. I fear the domination of education by the practicing members of any profession or group. Of course there should be close cooperation between professional schools and associations of practitioners whether they be lawyers, physicians, businessmen or others. The meetings of those who practice with those who teach will benefit both. The teachers need to know more of what is done in the day-to-day work of practitioners, and there is much in the theory of a profession that the practitioners tend to forget in the hurry of their living.

Chapters 7 and 8 bring the history of legal education up to the present. They might well have been combined into one as I found some overlapping that made for difficult correlating.

In the discussion of prelegal education, there seems to be agreement that there should be three years of college but no definite ideas as to what should be taught in those three years. It would be my hope that it not be prelegal *per se*. In our complex society, there is much for a young man and a young woman to learn so that they can become worthy citizens without regard to the means that they choose to earn a living. Hence, too limited a concept of prelegal education would be bad, and I would urge the same broad undergraduate college education for lawyers that I would urge for businessmen, trade-union leaders, doctors, ministers, engineers, and others—that is, the humanities, the social sciences, the natural sciences, the arts, the speaking and writing of our language. Let us start with the concept of developing people as individual human beings and of training them afterwards in the specialized graduate schools for their careers. But this is an ideal which may not be attainable in our time. It does not mean that I would negate my earlier thoughts on not abolishing unapproved schools if they can meet appropriate minimum educational requirements.

As to law school courses, I am hardly competent to deal with a detailed curriculum. Dean Harno does not go into that either, though some discussion of course subjects might have been useful in view of the differences of opinion that exist between members of his profession as to what courses should be included in a law school curriculum. Dean Harno summed up

quite aptly the impression that I had throughout the survey that too much attention has been given to quantity—number of years of prelegal education and of law study, number of books in a library, number of teachers and amount of courses and study. More consideration of the quality of legal education, including its correlation to the social sciences and their underlying philosophies would be indicated.

Judge Frank's suggestion for legal clinics⁶ seemed to me worthy of more attention and study—not necessarily legal clinics that would be similar to medical internships in hospitals after graduation, but legal clinics that would be available to students while at law school. Perhaps it should be obligatory that all law students devote themselves to some form of legal activity outside the classroom instead of limiting the number to those who are now active on law reviews or in moot courts and barristers' unions where membership is too frequently based on scholastic standing and so excludes many who are likely to become excellent legal practitioners even though their academic work is not of the best.

Dean Harno does mention in more than one place the feeling of many that our legal education is lacking in practicality. Something does seem wrong when about half of our law school graduates who have received their degrees from approved university law schools fail in their bar examinations. What is wrong, I do not know, and I have heard varying opinions from law school teachers and from lawyers. But, assuredly, it does not make much sense for a young man or young woman to receive a degree after spending three years in an "approved" law school and then to flunk a bar examination. Something is lacking, and I would urge that law schools and bar associations tackle this particular problem quickly. I am not satisfied with the explanation that law schools cannot teach the procedures of the forty-eight states from which their students may come and to which they may afterwards go to practice. If a cram course on procedures is necessary between graduation and the bar examination, then cram courses should be made compulsory and an adequate number of such courses should be established. Perhaps a university law school should devote a month or six weeks of its senior year to an adequate cram course. Or perhaps the bar examination should not give so much weight to the detailed procedures of serving summonses or what-not that are the rule in the individual state. Writing as a non-lawyer, I would not know what courses in procedure might or might not be necessary. This should, however, not be too difficult a problem for the ABA and the AALS to get together on, particularly as both associations seem to have something to do with the content of bar examinations.

Dean Harno is surely right in saying that, "Ethical conduct is an expression of character . . ." ⁷ and in writing that ethical standards cannot be taught by rote in the classroom. But to that he added, "What

6. *Id.* at 148.

7. *Id.* at 155.

the profession is, depends upon what lawyers as individuals do"⁸—which, therefore, brings us first to some basic problems of standards and conduct. These were not discussed in the book and it may be that I oversimplify or omit more important ones. But, I ask—in guiding the destinies of a client, should the lawyer think only of the interests of the client, devote himself assiduously to those interests without regard to the spirit and intent of the law and without consideration for the public welfare? In interpreting the law, is it the proper function of a lawyer to discover ways of evasion that are legalistically correct and yet obviously unethical? To what extent should lawyers and their associations as expert technicians in the law sponsor legislation for economic and social reform, champion civil liberties, defend the constitutional rights of political dissidents, without supporting their causes? These and a host of other questions suggest themselves for consideration.

A courageous and dynamic Bar will by example stimulate the teacher in the classroom to inspire the students with respect for their profession and with personal zeal and idealism. No three hour a week course in legal ethics can provide the stimulus that a faculty body can give its students. And Dean Harno's summary of the proposal made by Professor Mathews is worthy of study by bar associations and law schools if they would fulfill their leadership role in our democracy.

“. . . he [Professor Mathews] announced a proposal for an attack by the Association on the whole problem of training law students in the perception of moral values. He related this to an understanding of those values that underlie American democratic institutions, as well as those that bear on the functions of a lawyer in relation to his client and the court. The assumption back of this broader objective was that a substantial proportion of lawyers attain places of community and national leadership and do so for the very reason that they are lawyers; and that this in turn gives rise to responsibility on the part of the law schools to emphasize preparation for civic leadership in their programs of instruction.”⁹

In all, Dean Harno has written a thoughtful and thorough survey of legal education which I hope lawyers will read carefully. It is also a book that could well be read by leaders in the other branches of our economy that I have mentioned from time to time. For it is a book that one cannot read without being stimulated to think of one's own philosophy and what one's own responsibility is in his position and in his work in a free society. It is a book that could well be read by all who would interest themselves in the philosophies of their professions and who are interested in the teaching in their fields. And while I do not quite accept the role that the lawyers give themselves, I would go along with the quotation

8. *Id.* at 158.

9. *Id.* at 196.

from Woodrow Wilson who urged that law studies be part of a university discipline and instruction for all. "We need . . . laymen who understand the necessity for law, and the right uses of it, too well to be unduly impatient of its restraints; and lawyers who understand the necessity for reform and the safe means of effecting it, too well to be unreasonably shy of assisting it."¹⁰ And I would also accept gladly the quotation from Lasswell and McDougal, "A first indispensable step toward the effective reform of legal education . . . is to clarify ultimate aim. We submit . . . this basic proposition: if legal education in the contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic *training for policy-making* . . . the adaptation of legal education to the policy needs of a free society."¹¹ Perhaps, as Dean Harno suggests, this is something of an oversimplification and, perhaps, Lasswell and McDougal place the lawyers a cut or two ahead of other professions. But, assuredly, it is a statement of basic principle which is a challenge not only to the legal profession in its education and in its practice but also a challenge to other professions and their educational systems as well.

Morris S. Rosenthal †

A TRIAL JUDGE'S REVIEW

By asking a number of persons concurrently to review Professor Harno's book, the Law Review has, purposely or not, invited them inevitably to give their own views on legal education in this country. For essentially this is a non-controversial book, although it presents all sides of controversies that have raged for generations. True, the author's opinions sift through at times, but never strongly enough to make a target for a reviewer's pot shots or approbation. This would therefore be a dismal issue of the Law Review if all the reviewers clasped hands in a circle and chanted well-deserved but uniform praise for the lucidity, authenticity and objectivity of Professor Harno's book. Fortunately, the book is designed to provoke, if not impose, points of view.

So scrupulously has Professor Harno presented all sides of every issue that the reviewer finds ample nourishment for his own beliefs; or, as in my case, for the formulation of beliefs. I have learned a great deal about the origin, progress and present status of legal education from this compact but comprehensive volume. More important, it has served to integrate and place in proper focus a ragged miscellany of information I have gathered through the years, and to dispel certain misconceptions.

Professor Harno is greatly concerned with the criticism that the training offered by the law schools is wanting in "perspective and breadth

¹⁰ *Id.* at 84.

¹¹ *Id.* at 67 (The italics are those of Lasswell and McDougal).

† Chairman of the Executive Committee of the American Arbitration Association; Senior Councillor of the National Council of the American Importers, Inc.; author of *TECHNIQUES OF INTERNATIONAL TRADE* (1950).

of learning.”¹ I believe a lawyer should be a good craftsman, but the education of a lawyer entails considerably more than imparting merely the technical skills of a craft. Professor Harno flatly terms the education of a lawyer “a lifetime undertaking.”² He notes the ferment in the profession in the late 1700’s and early 1800’s which caused lawyers “to cast off the mental confinement associated with the routines of the practice of law and to become enlightened leaders in public affairs.”³ He states—with approval, it appears to my prejudiced eye—that to these men “the study of law, government and society formed one seamless web, [and that] law, economics, politics and sociology were parts of a synthesis.”⁴

I suspect the author believes that the absence of such a synthesis in present day legal education obscures the practitioner’s perspective and limits his potential for valuable and rewarding service in professional and communal areas. It appears to me that an intelligent understanding of our political and social structure—of the fundamental functioning of our democracy—does more than give personal and cultural breadth to the lawyer, does more than prepare him for public service. In a practical sense it is an essential in a very important aspect of a lawyer’s job—the complete apprehension and comprehension of present and future juridical, administrative, and sometimes legislative action.

Professor Harno devotes considerable space to various programs for prelegal education. There is no doubt that certain basic prelegal courses can develop much of the desired synthesis. A query not touched on in the book: Can we then catch our law students young enough to expose them to such prelegal training? In a survey sponsored by the American Bar Association and Carnegie Foundation in 1949, questionnaires were circulated in eighty-one law schools. To the question “At what age did you decide to study law?” twelve per cent answered that it was before they were fifteen years old; thirty-eight per cent, between their fifteenth and nineteenth years; thirty-six per cent, between their twentieth and twenty-fourth years; and thirteen per cent, when they were twenty-five years or more. I doubt that the late entries—constituting one-half of our law students—would embark on an ambitious prelegal schedule of courses. Nor could the crammed conventional law curriculum accommodate such synthesizing courses, even if lengthened considerably.

Professor Harno presents fully the views of those who hold that, while the law schools may develop adequately the analytical powers of their students, they fail to prepare them properly for the actual practice of the law. This, I believe, is a responsibility of the Bar, and not of the law schools. Moot courts, legal clinics, varied practice seminars, are all to the good; but they cannot substitute for actual experience in a law office any more than a mastery of blueprints can give a young architect the experience to be gained by participating in the actual construction of a

1. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 2 (1953).

2. *Id.* at 126.

3. *Id.* at 21.

4. *Id.* at 22.

building. Even such transition training as is given law students, however, seems to emphasize too heavily aspects of courthouse litigation which command a diminishing portion of the average lawyer's time.

Unfortunately, few law offices today are equipped, and few lawyers are attuned, to share professional experiences with students, as in the days of office apprenticeships. But no call to professional duty has ever failed to enlist a sufficient number of high-minded lawyers. I am confident a program sponsored by the organized Bar to develop a large enough contingent of practicing lawyers to impart practitioner skills to law students would meet with success.

Professor Harno gives extensive consideration to the important and burning debate on standards of admission to the study of law and to the Bar. While I gather he leans toward the high-standard school, which contends " . . . the privilege of practicing law is of high public concern,"⁵ he gives equal space to those who argue that admission to the Bar must not be denied the poor boy, lest "the practice of law . . . become the privilege of the well-to-do. . . ."⁶

Many other thought-provoking subjects are discussed dispassionately and cogently in this well-organized book. The legal profession is indebted to the Survey of the Legal Profession, which sponsored the study that furnished the material for Professor Harno's book.

Bernard Botein †

A PRACTICING ATTORNEY'S REVIEW

Not for Yesterday, Nor for Today, but for Tomorrow

"The skills and proficiencies involved in the practice of law are manifold and from this complex stem the problems of legal education. It has been said that the practice of law is an art, and so it is. But is competency in the legal profession to be measured alone by the proved skill of the draftsman? Others have emphasized that the practice of law is a public calling, carrying high ethical responsibilities, and that the profession is a learned one with a vast literature which its votaries must master. This, indeed, is true, but again, is competency on the part of the members of the profession to be measured alone by their achieved learning and their ethical standards?"¹

With these questions Dean Harno begins his Survey report on pre-admission legal education. Comprehensive and thorough, it deserves read-

5. *Id.* at 2.

6. *Ibid.*

† Associate Justice of the Appellate Division, Supreme Court of New York, First Department; former Assistant District Attorney, New York County; author of *TRIAL JUDGE* (1952).

ing by every lawyer interested in the future of his profession. For law school administrators and teachers, it will light the way to sorely needed changes and improvements.

As background for his appraisal of the present, the Dean reviews the past, from which it appears that controversy over improvement in legal education is not new. Lawyers being what they are, the struggle will undoubtedly continue as long as there are lawyers who measure existing educational practice against the basic standard of public service required of the Bar, who understand that it is not a static standard, but one that advances in step with the ever increasing complexity of civilization, and who believe that it is not enough to have legal education according to the needs of the past generation of lawyers, nor even of the current generation, but that students must be trained to meet the needs of the future in which they will serve the public.

For the seventy-five years of its existence the American Bar Association has worked toward the improvement of legal education and of standards of admission to practice. "These were not minor skirmishes; they were issues on which strong-minded men spoke with feeling and from conviction. Those favoring standards for admission sought to impress the view that the privilege of practicing law is of high public concern; that the lawyer is the spokesman for others; that in representing others, their property, their liberty, and, indeed, their lives may depend on the breadth of his learning, his knowledge of law, and the skill with which he works; that it follows that the privilege to practice law should be granted only to applicants of proved learning, fitness, and competence."²

"What we have been talking about is the way of ascertaining or of producing competency to render that service. Upon what standard of judgment shall we consider and attempt to do that? Of our rights? Of the rights of the young men who come here crowding the gates of our Bar? Is it a privilege to be passed around, a benefit to be conferred? Is there any doubt that that standard is inadmissible? Do we not all reject it?

"The standard of public service is the standard of the Bar, if the Bar is to live; the maintenance of justice, the rendering of justice to rich and poor alike; prompt, inexpensive, efficient justice."³ So said Elihu Root in 1922.

"What are the implications of the foregoing statements for legal education? We start from the premise that the work of no other profession, no other calling, requires of its votaries so high a degree of versatility, insight, and imagination as is demanded of lawyers. Knowledge is a factor—knowledge over a wide range of subjects, legal and non-legal. Aptitudes and skills are involved. The lawyer is a craftsman and the aim of legal education must be to inculcate in him the skills of the craft. But the lawyer must be much more than a good craftsman. Professor Leach has listed the following as the basic qualities of a good lawyer: fact conscious-

2. *Id.* at 2.

3. *Id.* at 110 (The Author's footnotes are omitted throughout).

ness; a sense of relevance; comprehensiveness; foresight; lingual sophistication; precision and persuasiveness of speech; 'and finally, and pervading all the rest, and possibly the only one that is really basic: *self-discipline in habits of thoroughness*, and abhorrence of superficiality and approximation.'"⁴

"The objective in legal education is to produce well-trained and capable lawyers—lawyers who are skilled in legal procedures, who are versatile in the tasks of the law, who have an understanding and a vision of the purposes and mission of the law, and who are guided by a sense of moral responsibility."⁵

At what point in the life of the lawyer should he be required to have those qualities? Here is a major dividing point. All agree on the requirement, but some say that it is enough that the mature lawyer be learned, fit and competent. Others, among whom is this reviewer, believe that those qualities should be required of the embryo lawyer before he is admitted to the Bar and turned loose upon an unsuspecting public with a license to practice the law in all of its branches. "The controlling consideration should be the public service . . ." said Elihu Root in 1916.⁶

Some of those who object to this standard say that it cannot be done, that the law schools cannot meet the requirement, that their three years are already overcrowded, etc. They say that the law schools are not to be held responsible for the "fitness and competence" of their graduates, and that their graduates are to attain those qualities in some unspecified manner, after admission and at the expense of their clients. To this we reply that the law schools cling to inefficient methods and have made no whole-hearted effort to meet the needs of the public in the future in which their students will practice.

"Bear in mind,' bluntly said an adviser on this study, 'that *the law schools have insisted on a monopoly of legal education*. . . . The dilemma is one that the law schools have created for themselves. If they will say, after honest consideration, that they are unfit for such teaching then it will be up to the courts and the profession to take charge and devise some alternative plan.'"⁷

Saying that it is not within his survey assignment to divine future developments,⁸ Dean Harno does not draw up a bill of particulars for change and improvement. We will look at what he does point out as defects and inefficiencies in present day legal education. Perhaps improvement in those items will tend to produce, for practice tomorrow, "applicants of proved learning, fitness, and competence."⁹

What guideposts does Dean Harno set up for us?

4. *Id.* at 124.

5. *Id.* at 164.

6. *Id.* at 102.

7. *Id.* at 175-6 (*Italics added*).

8. *Id.* at 196.

9. See text at note 2 *supra*.

Pre-Law School Education:

Stressing the point that legal education is a lifetime undertaking and must, therefore, be viewed not in piecemeal but as a synthesis, Dean Harno declares that the law schools have been shortsighted and perhaps neglectful of their responsibilities in focusing their attention exclusively on the time the student spends in law school. He suggests that "law teachers are unable to get an adequate perspective on their immediate assignments unless they have an insight into what use their students have made of their time before entering law school."¹⁰ This important problem of pre-law school education has been discussed by law teachers but the discussions have yielded nothing concrete and consequently little if any guidance has been offered by the law schools. "Some teachers, indeed, have taken the position that this subject is none of their business."¹¹ Their concern, Dean Harno tells us, is only that the student has accumulated credit during three years of college work.¹²

Indicating that the most vocal complaint of the law schools against the substance of the students' pre-law school preparation is their deficiency in English, Dean Harno suggests that this is one pre-law school subject, the mastery of which all agree is essential to a lawyer. Instead of trying to remedy this deficiency, as some law schools have done, by instituting legal writing courses which take up precious law school time, Dean Harno recommends that the law schools insist on proficiency in English as a condition to admission. In this area at least, all agree as to the necessity, he says, and after English requisites have been set up perhaps agreement can be reached as to other pre-law school requirements.¹³

Law School Curricula:

"The criticisms of the professional programs of the law schools are difficult to classify since they shade into one another and as a consequence vary from each other only in emphasis. Broadly, all can be grouped under one heading, that the schools do not adequately prepare students for the tasks they will have to perform in the practice. More specifically they relate to the following: (1) that the programs of instruction, with their emphasis on case study, are time-consuming, without commensurate educational returns to the students; (2) that they are lacking in perspective as to the scope and implications of the law, and as to the problems the lawyer must solve in the practice; (3) that they fail to provide a synthesis of the law and a synthesis of law and related disciplines; (4) that they neglect training in the practical skills a lawyer must have; and (5) that they fail to inculcate in students an understanding of professional standards and ideals."¹⁴

10. HARNO, *op. cit. supra* note 1, at 126-7.

11. *Id.* at 127.

12. *Id.* at 129.

13. *Id.* at 131.

14. *Id.* at 137.

The Case Book Method:

Professor Harno indicates that although most critics of the case book method would not abolish it completely, they would limit its use to the first one or two semesters at which time it is a useful tool to hold attention and to teach essential skills. After that its value as a teaching tool decreases severely because it is extremely time consuming and because it no longer serves to hold the interest of the student.¹⁵ He quotes the chairman of the Committee on Curriculum of the Association of American Law Schools, Professor Llewellyn, who has spoken for many practitioners:

"In any event, . . . three things are obvious. The first is that the skills properly to be derived from case teaching are essential to every lawyer. The second is that the handling of all or the bulk of the inculcation of the rules of law by way of the case-class (which comes, before the third year, to deaden students' interest as much as in the first semester it stimulated that interest) is so costly in time as to make the amount of information acquired about the more important or typical fields of law definitely inadequate for any graduate. The third thing is that along with the so-called "case skills" there are many other craft-skills of the lawyer which the schools can and should impart both in theory and in practice.'" ¹⁶

Narrowness—Lack of Breadth, Synthesis and Perspective:

"Another phase of the broad criticism that legal education is too restricted relates to the fact that the training given students emphasizes primarily the particulars of the law; that it fails to give them an historical grounding; and that it ignores the importance of studying law in the terms of universals. Stated more briefly, the criticism is that students are schooled to see the trees and not the forest."¹⁷

The author characterizes the evolution of Anglo-American legal education as having consisted of three approaches: the apprenticeship system; the approach which stressed a broad course of instruction; and the approach which was dramatized by the introduction of the case method and which "substantially isolates the study of law from its social environment."¹⁸ The acceptance of the second or broad course of instruction approach as the fundamental principle of the law school curriculum is, according to Dean Harno, a major issue in legal education today.

"In our time, and in the United States, where progress on this subject is recorded, Mr. Chief Justice Vanderbilt nevertheless found cause to express concern over it. 'It is singular,' he said, 'that in an age when it is manifest that broad enlightened leadership is essential to the survival of civilization there should be anything less than a unanimous vote as to the necessity of the widest possible training for our public leaders.'" ¹⁹

15. *Id.* at 139.

16. *Id.* at 140.

17. *Id.* at 144.

18. *Id.* at 127-8.

19. *Id.* at 129.

Emphasizing the fact that the lawyer is no longer primarily a court room advocate, Dean Harno points up the role of the modern attorney as counsellor, planner and community leader. With these new tasks appears a necessity for perspective and breadth of knowledge that transcends that supplied by law schools today. Thus, he says, the criticism that the law schools are not keyed to the problems with which lawyers are faced in practice is one of substantial merit.²⁰

Neglected Fields—Legislation:

Professor Harno asserts that one of the neglected fields of legal education is that of legislation. Legislation to him is much more than proficiency in statutory law; it includes the lawyers' functions of negotiating, planning and drafting of all legal documents—statutes, wills, contracts, etc. Thus the legislative process is that of establishing the legal framework within which specified legal relations will function. "It is passing strange that law teachers could at any time, at least in the modern era, have ignored a phase so real, so essential to the education of lawyers as the legislative process."²¹

Neglected Fields—The Skills of the Practice:

The author reports that the most vocal criticism of legal education is against its lack of practical training. The answer for him does not lie in a complete reversion to the apprenticeship system, for that method lacked "educational versatility, perspective and vision,"²² but, nevertheless, he recognizes the fact that law is a skilled craft which requires of its practitioners a proficiency in the "skills inherent in the practice of law."²³ He quotes Judge Jerome Frank who maintains that a great deal was lost when the apprentice system was entirely abandoned. "But is it not plain that without giving up entirely the casebook method and without discarding the invaluable alliance with the so-called 'social sciences,' our law schools should once more bring themselves into close contact with what clients need and what courts and lawyers actually do? Should the schools not execute an about-face? Should they not now adopt Judge Reeves' 18th Century apprentice-school method, modifying it in the light of the wisdom gained on the long detour?"²⁴ Dean Harno feels certain that the law schools are able to go further in the inculcation of practical skills. "It is not unlikely that [the law schools] will be able to go all the way in bridging the gap between law study and the practice, but failing that, then they should frankly acknowledge that some other agency or agencies must step in to finish the task."²⁵

20. *Id.* at 140-1.

21. *Id.* at 142.

22. *Id.* at 147.

23. *Ibid.*

24. *Id.* at 148.

25. *Id.* at 175-6.

The Legal Aid Clinic—a Delusion:

The legal aid clinic is discussed as a device for instruction in practical skills.²⁶ Of course, students who have worked in clinics are enthusiastic. They have no standard for comparison. They were so starved for all that even bordered on the practical, that they were eager to grasp anything offered. The fact, the actuality, is that a student's experience in legal aid covers only a very narrow field in a repetitious, time-consuming manner.

Divorced from the theories of those who praise it, legal aid in practice offers little real training. "Many men will have but limited use for much of the training in the legal aid clinic."²⁷ Such a clinic is primarily a charity, not a teaching device. If converted into a training school of substantial value, it will necessarily neglect its charitable function. If the live material is elevated to a point where it is representative of general law practice, the clinic will cease to serve those who deserve charity and will attract those who should be paying clients of the lawyers of the community.

As presently conducted, at least, about all that can be said for the legal aid clinic as a teaching device is that it is better than nothing. It cannot take the place of sound instruction in a variety of practical skills.

Neglected Fields—Facts:

"What is perhaps the greatest weakness of a young law-school graduate is that he is inept in dealing with facts. In the inculcation of this skill, case instruction as employed in the law schools falters. . . . The study of appellate decisions thus fails to bring home to the student an insight into the 'blood, toil, tears and sweat' involved in the lawyer's labor over facts. Case reading does not adequately discipline the neophyte for this ordeal. As a consequence the common criticism of the young lawyer is that he has not been well taught to deal with facts."²⁸

Neglected Fields—Professional Ideals and Functions:

"If inculcation of professional standards in students means merely introducing them to the canons of professional ethics and to a few appellate court decisions involving disciplinary proceedings against lawyers, then the answer must be an emphatic 'no' to such procedure. But surely that is not the only approach to this subject. Ethical standards for the individual are born of personal conviction. The legal profession is a great creative and guiding force in society. Is it measuring up to its potentialities? What the profession is, depends upon what lawyers as individuals do. 'If the law school should undertake to devote a part of its instructional program to a consideration of the future role of the legal profession,' said the Harvard Committee, 'attention should probably be specifically directed to the following matters: (1) the basic social factors influencing the kinds of tasks the lawyer is called upon to undertake; (2) the factors

26. *Id.* at 173-5.

27. *Id.* at 174.

28. *Id.* at 152-3.

influencing the growth of other professions and the balance between professions; (3) the opportunities and demands of particular branches of legal practice . . . ; (4) the lawyer's responsibility with respect to basic issues of policy, like that of economic planning.'

"If the question before us relates to instruction of that sort, the answer this time is an emphatic 'yes.' The law schools cannot escape that responsibility by debating 'how broad should be the training' they should seek to give."²⁹

It should not be necessary to add that success in this endeavor can only be accomplished by a faculty enthusiastic about the practice of law and capable of inculcating in its students a like enthusiasm.

If a reviewer must point out some error, a correction is suggested, not to Dean Harno, but to Professor Cheatham, whose survey report Dean Harno quoted:

"In part, the disagreement [over the teaching of professional standards] seems to come from the attitude of the students toward the bar and the bench. Where it is respected, there may be emphasis on contact with and lectures by the bar and bench. In a more cynical or skeptical environment, this is not urged."³⁰

This reviewer suggests that the attitude of students stems directly from the attitude of their instructors. Where the members of a faculty are cynical or skeptical about the practice and practitioners, and about the social value of our profession, there will be a "more cynical or skeptical environment." I cannot resist the question: What kind of lawyers are produced in such an environment?

Appraisal of the Law Schools:

Dean Harno writes of the reports of the survey's inspectors of the law schools: ". . . we note, first of all, the conclusion of the inspectors that law school faculties have done all too little thinking in terms of aims and objectives in legal education."³¹

"In fairness to the schools we should state that the feeling among law teachers is that they are constantly dealing with questions relating to aims and objectives. What they have done is to approach this subject interstitially, piecemeal and not comprehensively. Some schools, have, indeed, subjected their programs of instruction to searching analysis, for example, a study . . . [at] Columbia . . . in the late 1920's, and one . . . [at] Harvard . . . in 1947, but these have been rare undertakings. . . . This situation in the schools, we must conclude, shows a major weakness in legal education."³²

Dean Harno reports that several of the inspectors point out that one of the next major moves for improvement in legal education must be

29. *Id.* at 158-9.

30. *Id.* at 158.

31. *Id.* at 161.

32. *Id.* at 162.

through emphasis on the criterion of quality rather than quantity. "The objective in legal education is to produce well-trained and capable lawyers—lawyers who are skilled in legal procedures, who are versatile in the tasks of the law, who have an understanding and a vision of the purposes and mission of the law, and who are guided by a sense of moral responsibility. The traits we are describing involve quality. . . ." ³³ In law school admission and graduation standards and in bar admission standards quality has been inadequately stressed, to the weakness of legal education.

"Several of the men who made the inspections laid stress on the fact that law-school classes often are too large. This, in part, can be ascribed to the constant pressure to make legal education cheap." ³⁴ Pressure from what source? Certainly not from the Bar.

"Said one inspector, 'Classes are too large,' and there is 'no sound program for counselling students.' . . . Observed another, '. . . Written exercises and tests from which the student would derive profit are not required in large classes because of the tremendous burden of paper work they impose on the instructor.' 'Basically,' commented still another, 'the difficulty with legal education as compared with modern medical education is that the law schools have been mass producers operating on a low cost basis. It is characteristic of the law schools that their students are taught in large classes without much opportunity for supervised individual work.' We need not elaborate further. The criticism that classes as conducted in many law schools are too large for educational efficiency is a valid one." ³⁵

Dean Harno's view of the law school curriculum is that it is overcrowded. The answer to a student's desire for a comprehensive program of instruction, he says, is not through the addition of courses to the curriculum. If the case method has had its maximum impact by the end of the first year, different and more rapid methods in the later years will enable the student to obtain a more comprehensive education. ³⁶

"The problems of the curriculum are complicated yet further, and substantially so, through injections into it (in addition to instruction in . . . the emergent law mentioned above) of two highly divergent types of courses. One of these is responsive to the pressure . . . that legal education must have breadth and wide perspective. This pressure has resulted in the introduction into the curriculum of such courses as law and the economic order. . . . The other is responsive to the demands that the teaching of law must be made more practical. This pressure has stimulated the setting up of so-called 'skill courses'. . . ."

"All this the schools, or many of them, are attempting to pour into the ancient measure—the three-year course of study. *What is resulting is something just this side of chaos.*" ³⁷

33. *Id.* at 164-5.

34. *Id.* at 166.

35. *Id.* at 166-7.

36. *Id.* at 168.

37. *Id.* at 168-9.

"Something just this side of chaos." That is a serious indictment, coming from such a source, and one that demands attention.

"Something just this side of chaos." Dean Harno so describes the present condition of the curricula of the law schools. Considering, however, the defects and inefficiencies pointed out above, and others in his report not here repeated, the description may justly be applied to the whole pre-admission situation. Justly, that is, from the standpoints of the student, the practitioners, and the public.

What is to be Done?

The public interests are so important that this chaotic condition can no longer be neglected. The necessity, now more pressing than ever before, of "prompt, inexpensive, efficient justice"³⁸ requires action rather than indeterminate discussion.

Much is said about lawyers as public leaders, and about the duty of the schools to train for that function, but it is absurd to expect the public to respect and follow a low-income group such as the great majority of today's lawyers. Indeed, it may be said that those lawyers can not spare any time for such matters from their struggle to make a living. The low level of lawyers' incomes, and their failure to keep up with the general trend of wage earners in this country,³⁹ can well be charged to the failure of the schools to equip their graduates to serve the public.

Much can be done by the schools, but they need the help and guidance and direction of the active Bar. As is evident in particular from the reports of the survey inspectors of the schools and in general from the whole book, the schools are in too great a state of confusion and have too fixed a custom of hesitancy, and of debate without action, for us to expect much from them within any reasonable period of time, if they are left alone.

Beyond the area in which the schools can act, there is also much to be done by the Bar. The whole machinery for education and admission should be examined in the light of Dean Harno's report and of the rest of the survey, and evaluated in the light of the requirements of the standard of public service—not the standard of the past, nor even of the present, but of the foreseeable future. The conclusions so reached must then be made effective. That will require changes not only in the schools and in pre-law education, but also in bar examinations and admission requirements. Statutes will have to be revised, and large sums of money will have to be provided to enable the schools to do an adequate job.

All this is a task for practicing lawyers, whose life work is to face difficult situations, to decide on solutions for the difficulties, and then

38. See text at note 3 *supra*.

39. Segal and Fei, *The Economics of the Legal Profession: An Analysis by States*, 39 A.B.A.J. 110, 216 (Feb., March 1953); Cantrall, *Economic Inventory of the Legal Profession: Lawyers Can Take Lessons from Doctors*, 38 A.B.A.J. 196 (March 1952).

to make those solutions effective. The task cannot be left to the schools alone. It is too serious and too urgent for endless debate.

While, as our author says, there is much ferment in the schools,⁴⁰ ". . . there also is an atmosphere of confusion. As if by common agreement law teachers no longer feel the restraints of the old dialectic of case analysis, but they have not found a substantive replacement for it."⁴¹ In other words, the situation is "just this side of chaos."⁴²

The law school men will complain that it is not fair to apply such a term to them and their schools. They will say that they are debating, and trying experiments, and are in a state of excitement and ferment, to use some of our author's words.⁴³ The debates sound impressive, until it is realized that they do not result in decisions; they are, merely, debates. The experiments sound impressive, until it is realized that what is being recited is one experiment in this school, another in a different school, and so on. And, after all, they are merely tentative experiments, and not whole-hearted changes.

What are the facts?

"Law school faculties have done all too little thinking in terms of aims and objectives in legal education."⁴⁴

"Unfortunately after the symposium there was no follow-up on this subject on the part of the Association."⁴⁵

". . . soul-searching of this sort is almost nonexistent among the schools; . . . but a minor fraction of them even have committees on curriculum; and . . . only a pitiful few have committees on aims and objectives."⁴⁶

"Of the nine schools I inspected, six showed no impact of the modern world, whatsoever."⁴⁷

". . . the advances in legal education in the last twenty-five years, most of them mechanical and pedestrian."⁴⁸

"Most law schools, as their catalogues give evidence, shrug off any real concern with the prelegal training of their students . . ."⁴⁹

"We law-school men talk glibly . . . but we haven't yet done the hard thinking and taken the difficult steps. . . ."⁵⁰

"The law schools have fretted over this question but they have not come to grips with it."⁵¹

40. HARNO, *op. cit. supra* note 1, at 180.

41. *Id.* at 186.

42. See text at note 37 *supra*.

43. HARNO, *op. cit. supra* note 1, at 180 *et seq.*

44. *Id.* at 161.

45. *Id.* at 162.

46. *Ibid.*

47. *Id.* at 163.

48. *Ibid.*

49. *Id.* at 167.

50. *Id.* at 168.

51. *Ibid.*

These examples, from only eight of 197 pages, could be amplified, but they will suffice. What we need is practical men to come to grips with the problem. We need an Elihu Root to lead us now as he led the fight that resulted in the adoption in 1922 of standards of legal education and admission.

A Practitioner's Prescription:

First, and foremost, take action. It is difficult to descend below chaos. Innovations can be modified in the light of experience, but if nothing is tried, there will be no experience. Next in importance is a unified plan to make the most of the six to eight years of college and law school. Perhaps some courses, customarily pre-law, can be more effective as law courses.⁵² Strict aptitude and other tests for admission to such a unified course should be required, although at the same time recognition must be made of the importance of the moral and ethical requirements of the practice. What Professor Leach calls lingual sophistication and precision and persuasiveness of speech must be recognized as the essential tool of the lawyer, and ways must be found to teach the use of this tool, to the necessary degree of perfection, in the pre-law years. Other essential courses for the pre-law years are courses in accounting, business and finance, which later can be tied to law courses in taxation and business organization and management.

Case-book dialectics for torts, agency and contracts are perhaps necessary in the first semester, but not beyond that. Their elimination in later semesters would open the way for different and more rapid methods of instruction.⁵³ Two theories about teaching law should be abandoned: one, the idea that practical and statutory subjects, such as evidence, corporations, bankruptcy and taxation, to name only a few, can be taught from appellate decisions; and two, the notion that nothing can be taught directly, but only indirectly by inference and deduction. An effort must be made to acquaint every student with each major modern field of the law, without elaborating upon its development or upon all of its refinements. Extensive use must be made of demonstrations, forms, check-lists and every other teaching device, to acquaint students with the basic techniques of practice. Full scale exploration of apprenticeship and of vacation work in law offices to supplement formal class work is essential. In the selection of faculty members, emphasis should be placed upon enthusiasm for the law and for its practice, to the end that the students will be inculcated with that same enthusiasm and with a respect for the bench and bar.

Finally, of utmost importance are individual instruction and counselling of students by every faculty member, even to the exclusion of theoretical research, at least until the new methods of instruction are well worked out and other provisions made for adequate personal contacts between the faculty, the students and the bench and bar. And with this, much less

52. *Id.* at 146.

53. *Id.* at 168.

emphasis should be placed on final examinations and much more emphasis placed on the quality of work done throughout the courses. Throughout, emphasis must be placed upon quality, not only of instructors and instruction but as well of students and their work.

Extensive use should be made of practitioners in every law school course, to build a closer relation among the school, the student and the bar, and to bring the practical into the classroom in order that theory may escape unreality.⁵⁴ To assist each law school in accomplishing all these reforms and in thereafter staying in the main stream of the profession, its faculty should enlist practicing lawyers as part of the school's administration, not only to take an active part in its management but also to see that it has the funds essential for its work.

The bar examinations should be such as to make sure that the privilege of practicing law will "be granted only to applicants of proved learning, fitness and competence"⁵⁵ to meet the "standard of public service"⁵⁶ of the tomorrow in which they will practice.

All this is to the end that when there is another Survey of the Legal Profession and when another Harno is asked to write an exhaustive, thought-provoking report on legal education, he will not be forced, as Dean Harno has been, to devote the major portion of his attention to defects and inefficiencies. Instead, he will be able to recite the improvements that in the intervening years have made the law schools the efficient arm of the profession for the production of its new blood and for the improvement not only of the theories of the law but also of all its techniques and skills. It cannot be a better report, but its author may find more enjoyment in doing it.

Arch M. Cantrall †

54. *Id.* at 147.

55. See text at note 2 *supra*.

56. See text at note 3 *supra*.

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