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EXPANDING THE TUTORIAL PROGRAM: A BLOODLESS REVOLUTION

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> . . . perhaps the most striking fact about legal education during these past thirty-five years is that while effort after effort has gone into the problem of what bodies of law to teach and how to organize them for teaching, the dominant *methods of actual teaching* have remained in the area of undiscussed tradition rather than of on-going restudy.
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> REPORT OF THE COMMITTEE ON CURRICULUM OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS, 1944.[1]

At the fourteenth annual meeting of the Association of American Law Schools in 1914, Wesley Newcomb Hohfeld presented a paper entitled "A Vital School of Jurisprudence and Law: Have American Universities Awakened to the Enlarged Opportunities and Responsibilities of the Present Day?"[2] He propounded a true view of the "courses and activities of a true university school of jurisprudence and law."[3] He was greatly impressed by the vast social changes which he thought to be peculiar to that era and the failure of the law and the legal profession to meet the challenge they presented. Hohfeld's delineation of the functions of a "true" university law school also revealed a conception of the nature of law though he did not explicitly articulate how this conception necessarily determined the objectives of legal education. Almost thirty years later, when Lasswell and McDougal presented their "true view," they demonstrated clearly how the suggested

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1 HANDBOOK AND PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 159, 165 (1944).

2 HANDBOOK AND PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 76 (1914).

3 *Id.* at 80. Hohfeld's program, an exacting and complete plan for study, consisted of three basic (not "mutually exclusive or independent") divisions of work:

I. The Systematic and Developmental Study of Legal Systems.
II. The Professional and Detailed Study of the Anglo-American Legal System.
III. The Civic and Cultural Study of Legal Institutions.

The first concentrated on general jurisprudence—"that class of broader and more fundamental studies and activities that belong more peculiarly, though not exclusively, to the jurist, as distinguished from the ordinary practicing lawyer," while the second was professional or vocational training. The third area was allotted to study by "non-professional college students" because the existence and growth of democracy in our social and governmental institutions presented "a peculiarly imperative need for civic education in legal institutions and positive law as well as for the scientific and professional education already" mentioned. *Id.* at 114, 128, 129.

reforms in legal education followed from their conception of the lawyer as a policy maker in a democratic society.[4] To Langdell, whose "true view" revolutionized legal education, the connection between a philosophy of law and the function of a law school was simple and direct. "Law considered as a science, consists of certain principles or doctrines. . . . Each of these doctrines has arrived at its present state by slow degrees. . . . This growth is to be traced in the main through a series of cases. . . ."[5] Hence to acquire a mastery of these principles or doctrines through a study of leading cases "should be the business of every earnest student of law," and to afford the opportunity to acquire this mastery, of course, must be the business of every earnest law school.

Current discussions reflect, with varying degrees of explicitness and insight, the impact on the objectives of legal education of changed (and changing) conceptions of the nature of law and the function of lawyers. Langdell visualized law as a simple body of certain and fixed rules and relationships. Severe and profound changes in governmental activities and in economic and social relations mark the period since that day. This is not to say that the political and economic problems of his era were uncomplicated or that his simple theory of law was adequate. If complex human affairs require complex theories of law, at least that much has been accomplished by sociological jurisprudence, American legal realism, and the rise of the social sciences. Accordingly, statements of objectives for legal education emphasize that the law must break out of its traditional and narrow confines to undertake the solution of a wide range of social problems by an extensive variety of techniques.[6]

Broadened objectives point obviously to a change in the stuff (subject matter and materials) of legal study. If the law student is to acquire the skills of advocacy, counseling, negotiation, and draftsmanship, traditional materials of study cannot do the job. If the curiosity of the realists about what courts do in fact is to be transmuted from theory to teaching materials, the effort required will be enormous. If the law schools are to continue to draw on the social sciences, the need for new materials is apparent.

However, economy in presenting materials effectively to achieve accepted goals demands an evaluation of methods of instruction. And it is this problem of method that this paper will consider.

It is clear from the above that the discussion of legal education has been in terms of four elements—nature of law, objectives, materials, and methods.

[4] Lasswell and McDougal, *Legal Education and Public Policy; Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

[5] LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, WITH REFERENCES AND CITATIONS PREPARED FOR USE AS A TEXT-BOOK IN HARVARD LAW SCHOOL vi (1871). A portion of the introduction to the casebook is reprinted in Morgan, *The Case Method*, 4 J.LEGAL EDUC. 379 (1952). See also Langdell, *Teaching Law as a Science*, 21 AM.L.REV. 123 (1887).

[6] *E.g.*, Fuchs, *Legal Education and the Public Interest*, 1 J.LEGAL EDUC. 955 (1948); Gellhorn, *The Law Schools' Responsibility for Training Public Servants*, 9 U. OF CHI.L.REV. 469 (1941); Vanderbilt, *The Responsibilities of Our Law Schools to the Public and the Profession*, 3 J.LEGAL EDUC. 207 (1950); Hall, *Toward a Liberal Legal Education*, 30 IOWA L.REV. 394 (1944); Katz, *A Four Year Program for Legal Education*, 4 U. OF CHI.L.REV. 527 (1936); Lockhart, *Minnesota Program of Legal Education—The Four Year Plan*, 3 J.LEGAL EDUC. 324 (1950).

Discussion of method in the legal literature is meager.[7] Passing references to problems of method almost always occur only as small, off-hand remarks incidental to an examination of the objectives of legal education and the law school curriculum. The "case method," curiously enough, has been analyzed infrequently in terms of method; discussion of "case method" usually concerns itself with the relationship of objectives and materials and makes occasional bows to classroom technique. Even in those articles where one would expect discussion of method to be the central theme—such as descriptions of seminars, legal research courses, and problem-method teaching—only skillful probing reveals matter pertinent to method.

The meagerness of method discussion is justified only in part by the difficulty of separating method from the other elements of legal education. It is true that talking about one of the elements of legal education must to some extent be in terms of all of the others.[8] It is another example of the old "ends-means" problem: goals of legal education reflect theories of law and goals cannot be achieved until it is known by what method(s) they are to be taught and what materials are to be used. Moreover, the decision to aim for certain goals reasonably depends on the relative cost of available alternatives. And yet, it is not necessary to talk about all of the elements all of the time; one can talk about some of the elements some of the time. The need to communicate effectively by separation and emphasis is as real as the fact that legal education is a *gestalt.*

From the peripatetic school to progressive education, method has remained constant in comparison to the other elements. Also, it has at all times presented a limited range of choice. Thus, concentration on method is justified: education of the student must filter through the prism of method, whatever the theory of law and the objectives to which it points. Furthermore, attention to method affords a peculiarly advantageous position from which to test the practicality of the goals of legal education. There's many a slip 'twixt the model ("true view") in its perfect harmony and the *tabula rasa* of student and classroom.

Clearly, consideration of materials and methods is less exciting than grappling with theory and goals. A limited statement of goals makes the choice of materials simple. An expansive expression of goals also points easily to a body of material, but for the opposite reason—nothing human or non-human is foreign to it. In contrast, constructing systems of goals and theories of law is very appealing—who does not like to be a philosopher of law and an architect of curricula, especially if he may escape the consequences by invoking the incantation that "on this matter reasonable men may differ." It is a lesser task that we undertake: to examine currently available teaching methods, their deficiencies, and excellencies.

It is a commonplace in discussions of the "case method" to praise Langdell for revolutionizing legal education by substituting the appellate case for the

[7] See Cavers, *In Advocacy of the Problem Method,* 43 COL.L.REV. 449 (1943); Campbell, *Comparison of Educational Methods and Institutions,* 4 J.LEGAL EDUC. 25 (1952). See also *Report of Committee on Curriculum,* HANDBOOK AND PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 159 (1944).

[8] In an important sense the mere introduction of *materials* other than cases into the "Langdell casebook" was a way of indicating new substantive ideas and achieving broader objectives.

textbook as the basic material of legal study; and then to deplore that this led to a stultifying, mechanical process of extracting a rule of law from a hodgepodge of fact, rationale, and holding. A somewhat more adequate evaluation admits that the "case method" can go beyond this mechanical process, asserts, nevertheless, that it cannot teach all of the legal skills encompassed in a broad statement of objectives, and, finally, awakens to the fact that the "case method" has become too varied and complex for easy univocal characterization.[9] The "case method" merits reappraisal.[10]

Perhaps the first step is to attempt to separate the aspect of the "case method" which constitutes a body of materials from that which describes techniques of teaching. To Langdell, bemused by the concept of a science of law with neatly (if narrowly) framed rules, doctrines, and principles in well-determined, self-contained order, "casebook," as an arrangement of material, meant little more than a systematic organization of complete reports of appellate court opinions covering an entire field of law. It is not necessary to trace in detail the changes in attitudes toward law and its role in society to demonstrate why this narrow theory has been rejected, at least by most law teachers. These changes and their impact on objectives of legal education required a rethinking of what the judicial process involved. The "case method" became a way of studying the total complex process whereby legal rules, principles, and concepts reflected more than the maneuvering of the judge within the narrow confines of precedent. Now it was seen that a case was the resultant of many disparate elements, to which relative significance was difficult to attribute but which were easy to list: for example, the formal aspects of legal (logical) reasoning, the trial and appellate lawyers' skills of advocacy, the relevant social and economic pressures, and the personality and values of the judge. Once this theory of law was accepted, the "case method" became, at least for some teachers, a study of the total impact, within the bounds of feasibility, of every relevant influence on the legal process.

The more complex view of the law could influence law school study in three ways: in the selection and arrangement of cases;[11] in the manner in which student and teacher worked with cases; and in the introduction of non-case material into the casebook. The greatest glory to old Langdell is not so much the impact that the introduction of the "case method" made initially but the adaptability of the casebook to the demands of the changing attitudes toward law and objectives of legal education. Had this adaptation not occurred, the "case method" would have been repudiated, for its retention unchanged would have resulted in a sterile cultural lag. Instead, the original virtue of the "case method," that it brought realism into legal study, was perpetuated.

The authors of casebooks, to reflect the newer attitude toward legal education, combine in different ways a number of well-recognized devices, such as the digested case, the provocative question, the hypothetical case, and the

9 Morgan, *The Case Method*, 4 J.LEGAL EDUC. 379 (1952).

10 Professors Patterson and Morgan each have given a great deal of attention to the case method recently. See Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J.LEGAL EDUC. 1 (1951); Morgan, *supra* note 9.

11 For a good discussion of the important alternatives see Patterson, *supra* note 10, at 14–16.

problem situation.[12] Also, textual material, which may state a segment of substantive law, provide historical background, or introduce social science data, has been incorporated. Perhaps one of the most recent casebooks is the best example of how seeing the legal process in a profound and complex way determines the content and organization of a casebook. The table of contents of Kessler and Sharp, *Cases and Materials on Contracts*,[13] is a more stimulating and rewarding contribution to law and jurisprudence than many an article devoted to these subjects. Another obvious sign of changed attitudes toward law has been the addition of new courses and casebooks. Courses and casebooks in administrative law, taxation, and labor law have been followed by those in social legislation, corporate reorganization, and accounting.[14] This development is a further testimonial to the flexibility and adaptability of the casebook.

Delightfully enough, the enrichment[15] occurred at low cost, without disrupting the traditional organization of the law school. While some new courses were added, courses which had declined in popularity and importance were abandoned, and the organization of the curriculum around basic first, second, and third year courses was untouched. The really significant changes can be discovered only by looking between the covers of the casebook and through the door of the classroom.

In the classroom all is as it should be—not serene. It has been suggested that the "case method" naturally requires the use of the dialectic technique.[16] It may be quite true that this is the minimal requirement for effective use of the "case method," but the good teacher exploits the potentialities of the enriched casebook to the fullest with a neat balance of disciplined imaginativeness.[17] Enriched materials are useful only to the teacher who has mastered them. And mastery consists of seeing them in perspective. Superficial reference to the judge's gout, the railroad's might, and the widow's and orphan's plight is not a substitute for thoughtful presentation of economic, social, and psychological materials as a context for the process of legal reasoning. One virtue of this casebook-classroom complex is that it has highlighted the role of values in the law. Frequently, through the simplest case, the value conflicts of society are aired in the give and take of the classroom.

Clearly, the enriched casebook-classroom can achieve in large measure the broadest kind of legal education objectives. Enrichment of the casebook and course content has left unchanged the commitment of the law schools to teach a hard core of substantive law. Perhaps the explanation lies in the fact that "substantive law" has undergone a change in meaning, not always apparent. Substantive law now is intensive training in a series of related

12 A thirty page article has been devoted to describing in detail the various developments in casebook writing. See Ehrenzweig, *The American Casebook: "Cases and Materials,"* 32 GEO.L.J. 224 (1944).

13 KESSLER AND SHARP, CASES AND MATERIALS ON CONTRACTS vii (1953).

14 Dean Prosser has expressed some uneasiness about these developments—this atomization can perhaps go too far. See Prosser, *The Ten Year Curriculum*, 6 J. LEGAL EDUC. 149 (1953).

15 In spite of the unfortunate connotation of breakfast food, the word seems apt.

16 Patterson, *supra* note 10, at 17.

17 Obviously the casebook is not the only source of possible enrichment. The teacher also can furnish the additional information needed by drawing on his own and the students' store of experience.

skills in the understanding of legal reasoning and the judicial process, and is also peripherally concerned with the other lawyer skills. However, it is important to demonstrate that the "case method" cannot be the single technique of law school instruction (even if it continues to dominate). The enriched casebook has not wholly occupied the field; and there is not always one available even for the teacher who would like to use it. Moreover, not all teachers assume, or are capable of assuming, the responsibilities required by the enriched casebook. This slim argument alone is sufficient reason to consider alternative methods of teaching. Furthermore, while the skills of legal writing and drafting, research, argument-advocacy, statutory interpretation, and counseling and negotiation can be touched upon and pointed up, no form of casebook-classroom training affords an opportunity for drill and mastery of these skills.[18]

Seeing the "case method" in perspective requires that it be measured by other pedagogical criteria; this entails an examination of a range of possible relationships between student and teacher, and of student and teacher to the materials of study. An enriched casebook is a teacher-author organized casebook; the student is handed a basic organization of materials, largely within the bounds of traditional courses. References to outside cases, law review articles, and texts, and to tangential aspects of the problem, will be used in different degrees by the students, depending on each one's interest and diligence. If the teacher wants to further this process of individualization he may have to abandon the casebook. The student might be guided by a syllabus outline directing him to large amounts of materials; this will impose upon him a large part of the task of effectively organizing these materials in terms of relevance and emphasis. By this technique the teacher may achieve his goal of individualization but obviate the effective use of the classroom.[19] Instead, written or extended oral reports to the teacher may be required once the classroom nexus is eliminated. In truth, student-centered teaching as a pedagogical value is not optimally achieved in the classroom, despite an active dialectic, for the needs of the classroom presume a certain common denominator of student preparation and experience. The divergence of student experience through the process of individualization makes the classroom an inefficient forum for student-teacher, and student-student communication.[20] The tutorial method[21] is the traditional educational design to facilitate this process of individualization and communication.

Greater student participation, greater responsibility, and individualization are a part of general pedagogical values on all levels of education; it is hardly appropriate that they become centers of controversy in the law schools. By the time the student reaches law school he has gone through an educational system which has fought this battle *ad nauseam*. It remains for the law school

18 Somewhat paradoxically a casebook has grown around the drafting of legal documents. See COOK, LEGAL DRAFTING (1951). See also COOPER, EFFECTIVE LEGAL WRITING (1953).

19 Of course, any teacher with only 10 to 25 students can quite alone go far in achieving these objectives. However, it would require a different allocation of his time between his teaching service and his other professional activities.

20 Greater individualization minimizes the student-student relationship while it maximizes the student-teacher relationship.

21 Professor Harno has used this term. See HARNO, LEGAL EDUCATION IN THE UNITED STATES 182 (1953). We think it appropriate. But see note 23 *infra*.

only to be aware of these values and to adapt itself to their moderate realization without disruption.[22]

The tutorial method is already a part of many law school curricula. Since 1937, when the University of Chicago started a first year legal research and writing program, a number of schools have developed tutorial programs.[23] In his article, "Law School Training in Research and Exposition," [24] Professor Harry Kalven Jr. describes most acutely the beginnings, purpose, operation, and future of the University of Chicago program. This basic article recognized the full potential of tutorial instruction; however, subsequent articles dealing with legal research programs have emphasized the skill training in research and writing.[25] In 1945 the Indiana University School of Law undertook several experiments for giving instruction in legal writing and research in small group sessions, and ever since has gone ahead to develop a tutorial program as a firm part of the first year curriculum. It is the authors' experience connected with the Indiana program that will be referred to for examples in the remaining portion of this paper.[26] Perhaps it is worth making one point now to avoid any confusion that might arise. A seminar consisting of a small group of students, requiring individualized work, written or oral reports, and a high degree of student initiative and responsibility is, in the authors' view, a variation of the tutorial method, and by and large the merits and deficiencies of the tutorial method are applicable to it.[27]

22 Colleges and universities already have extensive seminar programs and problem courses. Therefore, it would seem a step backward to have a year in which the law student loses a thrust which he has already gained.

23 The Chicago course has not been called a tutorial program because "In the ordinary sense of the term" it is not "a tutorial system" in which the staff member mediates between the students and the faculty. "He is not responsible in any way for the student's work in his other courses, nor for his personal life." Kalven, *infra* note 24, at 118. While this is surely true, the term "tutorial" to characterize a method of non-classroom contact seems apt and acceptable if one is mindful of the foregoing distinction. See note 20 *supra*. At Indiana there has been a very definite guidance aspect (overtone) to the tutorial program, though it is closely integrated with the writing and research work.

24 1 J.LEGAL EDUC. 107 (1948). For a later report on the program see Kalven, *The Legal Writing Program in the Law School*, The University of Chicago Law School Record, Vol. 2, No. 1 (1953).

25 *Cook, Teaching Legal Writing Effectively in Separate Courses*, 2 J.LEGAL EDUC. 67 (1949); Shestack, *Legal Research and Writing: The Northwestern University Program*, 3 J.LEGAL EDUC. 126 (1950); Mandelker, *Legal Writing—The Drake Program*, 3 J.LEGAL EDUC. 583 (1951); Horowitz, *Legal Research and Writing at the University of Southern California—A Three Year Program*, 4 J.LEGAL EDUC. 95 (1951); Kepner, *The Rutgers Legal Method Program*, 5 J.LEGAL EDUC. 99 (1952); Cook, 4 WEST.RES.L.REV. 299 (1953). Judging from the description of these legal research courses, there is no evidence that Professor Kalven's insights into the very wide possibilities of the tutorial method have been picked up in the law schools.

26 Several members of the faculty past and present have participated in the origin and development of the program.

27 "The case method of instruction is used in the regularly scheduled courses. Some of the seminars and the honors work vary from this method. The seminars and honors work are designed to provide more intensive and advanced work than in the regular courses and to further the general policy of the School of encouraging independent research and writing." From YALE UNIV.LAW SCH.BULL. 1953–54, at 9.

One of the most stimulating features of the tutorial method is the opportunity it affords for the study of frontier problems. In the cooperative effort of exploring new problems the teacher leads the student by only a scant step. The casebook-classroom complex, depending upon "captured material," is not conducive to this rich interplay between student and teacher. The freedom of the tutorial method, however, invites imaginative and creative consideration of many troublesome areas of law and society not suitable to the confines of the classroom. The descriptions of the seminars offered at any of several law schools provide good examples of what can be done.[28]

Even as to those skills central to the casebook-classroom method, there is a need for breaking out of the typical classroom relationship. The tutorial method has a certain flexibility (obviously one of its main virtues) which permits concentration on particular aspects of the judicial process in ways not possible in the classroom. The process of rule making by case law can be examined so as to drive home the lessons not quite clinched in class. The tutorial method can be adapted to focus on the opinions of one judge, with research into his biographical background and the period in which he lived; and to give attention to the development of case law during a limited period of time, or in one jurisdiction.[29] Cases can be collected to highlight the importance of factual data—*e.g.*, showing the importance of commercial practice; and the rhetoric of opinions can be closely studied by a series of illuminating cases. Also, the tutorial method helps to bridge the gap between substantive courses, which do not pay sufficient attention to the damages, remedies, procedural, evidentiary, and conflict of laws aspects of a problem, and courses devoted to these subjects. A touch of realism that the classroom can never bring home is an appreciation of the wonderful and irritating legal reference system, a "double crostic" which makes both possible and impossible the job of finding the case, and the starkness of the situation when there is "no case in point."

Many a casebook now brings in social science data and emphasizes questions of policy raised by legal problems; however, the casebook-classroom needs to be supplemented by tutorial projects. Perhaps some examples will most easily demonstrate the value of the tutorial method for relating social science materials to law and for dealing with questions of policy.

1. Because law students infrequently consider the many diverse problems of effective and democratic judicial administration, the adjudication of small claims was selected for a research and writing project. The students studied small claims administration and procedure, and prepared a memorandum concerning the necessity and manner of special treatment of small claims and the problems to be encountered in establishing a small claims court. Adequate treatment required extensive research into legal and other materials, a clear

[28] One always hopes that the execution is equal to the eloquence of the catalogue.

[29] A project organized in this way has been carefully described by Professor Kalven, *supra* note 24, at 111. Students are initiated into the exposition of legal materials and intensive drill in precedent-analysis is achieved by student preparation of a memorandum analyzing the legal issues raised by a chronological series of cases. Some of the subjects that have been used or contemplated at Indiana are: self-incrimination, search and seizure, coerced confessions, right to counsel, free speech and picketing, intergovernmental tax immunity, eminent domain, and conversion.

statement of the major objectives of a small claims court, an understanding of the constitutional and statutory requirements that must be complied with in establishing a small claims court, and a critical analysis of the administrative and procedural aspects of the operation of a small claims court.

2. Absence of any substantial common law, Copyright Code, or Patent Act remedies against "piracy" in the dress industry has led on various occasions to proposals for legislative protection of dress design. The project supposed that a bill, similar to a recent French statute, provided in essence that an "artistic creation" (including a garment design, fabric, or pattern) of a member of a "seasonal clothing or ornamental industry" might not be imitated commercially during the season of initial exploitation. It did not include any administrative provisions but judicial remedies were provided for in accordance with the United States Copyright Code. The student was asked to analyze carefully and completely the merits and demerits of the bill and to indicate whether it should be reported on favorably. Background was furnished for the assignment by two lectures [30] and by a selection of cases and other materials [31] focusing attention on the development of the law in several closely related contexts (*e.g.*, musical and other artistic reproduction and news), and the relevance of economic considerations. Each student was expected to recount briefly the so-called common law copyright rule of first publication, consider techniques for limiting publication of dress design, indicate the actual and potential scope of judicial protection (emphasizing especially the limit to extending the *International News Service* [32] case), evaluate the variety of group (including the public) interests vying for recognition and acceptance, and discuss the problems to be encountered in administering the proposed legislation.[33]

3. If legal education reflects attitudes toward the law and the functions of the lawyer, it is important for students to see this relationship. To stimulate student thinking the following readings were assigned: Cardozo, *The Nature of the Judicial Process* (excerpts); Levi, "What Can the Law Schools Do?" [34]; Frank, "A Plea for Lawyer-Schools" [35]; and Clark, "'Practical Legal' Training an Illusion." [36] Each student was required to prepare a memorandum in which he analyzed the position of all the writers, empha-

30 The lectures were delivered by Professor Ralph F. Fuchs.

31 See GAVIT, FUCHS, and PAULSEN, CASES ON THE INTRODUCTION TO LAW AND THE JUDICIAL PROCESS, 350–444, 469–470 (1953).

32 International News Service v. Associated Press, 248 U.S. 215 (1918).

33 Regrettably, student papers reflected many undisciplined economic, social, and psychological arguments for and against passage of the proposed bill, especially regarding consumer psychology and buying habits. This raises the question whether a rich pre-legal education is a prerequisite for this kind of law school program. A project similar to "dress design" in purpose required a discussion of the problems suggested by the transit radio case, Public Utilities Comm'n v. Pollak, 343 U.S. 451 (1952). Emphasis was placed on critical examination of the best legal means, legislation, administrative action, judicial decision, or private arrangement, for resolving these problems.

34 See note 42, *infra*.

35 56 YALE L.J. 1303 (1947).

36 3 J.LEGAL EDUC. 423 (1951).

sizing the differences and agreements among them, and examined his own first year legal education from each writer's point of view.[37]

The central criticism currently directed at all legal education—that it is not practical enough because it does not emphasize "learning by doing"—is also the most widely recognized deficiency of the casebook-classroom method. Clearly, the enriched casebook-classroom does present to the student opportunities for watching the skill of appellate advocacy at work. Successful appellate advocacy, as well as the mistakes of counsel, and polemical and rhetorical techniques can all be studied in the cases, but there is no opportunity for actively exercising these skills. Another level of argument and advocacy occurs at the trial level of courts, and before administrative agency and arbitration board hearings. The appellate moot court, offered in many law schools, perhaps meets the need for the former kind of training,[38] and some schools have instituted trial moot court in an attempt to meet the need for the latter.

Similarly, the multiplicity of situations in which a lawyer uses his skill and wisdom in counseling and planning to avoid difficulties and then, strangely enough, in negotiating to settle them, while available for some scrutiny in the casebook-classroom cannot be segregated for concentrated study. This is a clear point at which the skill of the lawyer will benefit from the integration of sociological and psychological materials on small group communication, persuasion, and aggression. The authors are unaware of any specific program designed to teach these skills. If this is to be done in the law schools, the tutorial method is the most promising technique, but an even superior alternative to teach these subtle skills may be an internship program.

While statutory material has become important in most casebooks, and while there are courses specifically designed to provide practice in interpreting statutes, the law schools have not given sufficient time to instruction in drafting, whether of legislation or legally significant documents. It is apparent from some of the casebooks, *e.g.*, Contracts, Wills, and Procedure, that students are given an occasional opportunity to draft pertinent documents. In those schools which have recognized their obligation by adding courses in legislation it would seem desirable to give concurrent experience in statutory drafting. It is here that there is a perfect opportunity to make use of the tutorial personnel in creating, grading, and criticizing problems

[37] An evaluation of the aims (and techniques) of the tutorial program, and the aims of legal education generally, with emphasis on the inter-relation of the two, was attempted this past year by a faculty-student round table discussion at the end of the year.

Some nice jurisprudential issues could be explored by requiring preparation of an essay based on the following materials: Herman Wouk's *The Caine Mutiny;* Herman Melville's *Billy Budd;* and Lon Fuller's *The Case of the Speluncean Explorers: In the Supreme Court of Newgarth,* 62 HARV.L.REV. 616 (1949).

[38] It has been suggested that the "benefits of accessory devices, such as mock trials and analogous show-pieces" are "somewhat dubious . . . . There is too thick an air of make-believe about them." Rand, *Legal Education in Canada,* 32 CAN.B.REV. 387, 406 (1954).

supplementary not only to legislation courses [39] but to all substantive courses where drafting documents is important.[40]

Currently, law schools are being forcefully urged to broaden legal education in the direction of vocationalism and theoretical synthesis.[41] These demands are not contradictory, nor even conflicting (except perhaps in the extreme), and tutorial method must be a common factor in the realization of both. For certain kinds of student training the law schools may have to expand beyond "intramural" methods to an internship program.[42] Legal aid clinics, as they are operated at some law schools, hint at this mode of expansion but they are significantly different from the kind of legal clinics proposed for an internship program.[43] The real-life atmosphere brought to the law school (or the law school brought to the real-life atmosphere) may be necessary to most effectively train for counseling, negotiation, argument-advocacy, and drafting. But the tutorial method, expanding within the framework of the present law school curricula, can begin to treat these skills in a useful way. On the other hand, it is quite clear that the tutorial method of instruction in the law school can do an effective job of theoretical synthesis. And it cannot be denied that the internship program can bring the influences of social science data and policy thinking to bear in a functional context. Perhaps these alternative methods of learning are brought into balance by effective exploitation of each to accomplish in varying degrees all of the objectives that they are each capable of achieving, while recognizing the greater control and selectivity for pedagogical emphasis that is possible under tutorial instruction in the law school.

Whether law schools will follow a greatly expanded course of vocational training is not clear at this time. The change required in law school organization, budget, and personnel would be drastic. The other objective—theoretical synthesis—is perhaps closer to realization and has a lesser impact on law school make-up. Once the potentialities of even the enriched casebook-classroom complex have been largely realized, the next minimal step that a law school can take, if it decides to achieve the pedagogical values discussed in this paper, is to engage in a bloodless revolution [44] and expand the tutorial program in the first year. Here is the authors' modest proposal how this

[39] Professor Frank Horack's course on Legislation has been so supplemented by the tutorial program. The projects first required preparation of an extensive memorandum, in the form of a committee report, on the substantive and formal problems to be considered and worked out before drafting the particular piece of legislation for the State of Indiana. Subsequently, on the basis of a sample statute, the students drafted a bill and, after written criticism and personal interviews, revised the original bill. The subject areas used have been immunity for witnesses who claim the privilege against self-incrimination, right to counsel, and small-claims court procedure.

[40] A case problem similar to the one described in note 45 *infra* in the area of torts has called also for the preparation of instructions to the jury on issues of negligence, contributory negligence, and last clear chance doctrine.

[41] An inadequate but indicative definition of this ponderous term is: a miraculous amalgam of philosophy of law, social science data, and policy thinking.

[42] See Levi, *What can the Law Schools Do?* 18 U. of CHI.L.REV. 746 (1951). An internship or clinical program approaches apprenticeship training without destroying the law school.

[43] *Id.* at 753.

[44] We are reminded that money may be the lifeblood of the law school.

may be done in any one of three ways. If one-third of the first year student's time were to be allocated to the tutorial method of instruction, it could be used, in terms of its relationship to the standard first year courses, in the following ways. (1) One of the typical first year courses could be taught entirely by the tutorial method. Choice of projects, readings, cases, etc., would be designed to accomplish substantially the same coverage as in the traditional casebook-classroom. The advantage would be a useful counteraction to the casebook method of teaching in the other courses. (2) The time could be spent supplementing various phases of all of the first year courses. Each project would be closely integrated with one or more first year courses. The course teacher could call upon the tutorial personnel to help him to develop and administer problems to emphasize particular aspects of the course through intensive study, to drill in special skills, and to provide experience in research, writing, and drafting in the particular subject area. (3) The program could operate independently of the other portion of the first year curriculum. Projects would be selected and developed on their merits in terms of agreed upon objectives, and integration with other courses would not be a primary factor.[45]

It is evident from the foregoing discussion of the tutorial method that the projects for the program must be devised and adapted to the specific needs of the occasion; resort cannot be had to an already prepared casebook. The contrast is even clearer when it is recognized how few teachers prepare their own materials, as is manifested by the general adoption of a few popular casebooks, especially in the first year courses. Even where a teacher has prepared his own materials there is comparatively little change from year to year. Moreover, the tutorial method may require that materials be closely adapted to the needs and facilities of each school.

It is this constant development of new materials that calls for sharing among schools and raises the problem of how to share. There is some evidence that sharing has already proceeded by word of mouth, and it does occur by the exchange of ideas resulting from articles describing particular projects. It is hoped that a technique for effective sharing of good material can be worked out. At least we would like to extend at this point a general invitation to the reader to send for copies of materials used at Indiana, and we earnestly request copies of materials or descriptions of projects tried at other schools.

At each school the tutorial program is a group effort. Therefore, it provides a magnificent opportunity for the exchange of ideas. Even limited cooperation in this respect will lead to a beneficial breaking down of typical course lines in organizing the projects. To the extent that the tutorial program

[45] Projects have been developed in this way and have also constituted an integration with several first year courses. Specifically, one assignment consisted of one of several hypothetical fact situations which raised issues in the tort field under wrongful death, survival, and workmen's compensation statutes. The students were to develop the issues involved and plan a course of action for the client, discussing the alternatives available to the client and the reasons for and against their use. Jurisdictions were selected to demonstrate the inadequate draftsmanship and integration of legislation in this area, particularly in case of the continued existence of common-law immunities from suit, as when the injured party, the alleged tortfeasor, or both, die, or the injured party and tortfeasor stand in a marital or parental relationship. A similar project was also developed in the area of contract assignments. See also notes 29 and 39 *supra*.

attempts the task of greater vocational training and theoretical synthesis, extensive cooperation and communication among the law teachers, practitioners, judges, and social scientists will become common. Perhaps the most important aspect of this group effort is the forced and functional reappraisal of the objectives, materials, and methods of legal education. The actual working out of a problem necessitates a practical evaluation of these elements in terms of other alternatives. Of course this kind of self-reappraisal and self-evaluation occurs in a faculty as a group, and probably in each faculty member's mind, but the large appetite of a working tutorial program demands continuous critical self-analysis. It would be unfair not to mention some less desirable aspects of evolving and administering problems through group effort. A traditional virtue of the classroom, at least to some people, is the autonomy of the teacher. The tutorial method involves abandoning the inviolate isolation of the classroom for the huggermugger of group effort.[46] Occasionally, the teacher will have to give up what he conceives to be the "best" pedagogical practice in the interest of a method which does not necessarily transcend the abilities and personal attributes of the participants. Discussion is a technique of resolution, and the procedure may be more important than the result. The intransigent individualist can find comfort in the thought that in group effort the teacher is frequently a student and there is a happy combination of work and play.

[46] We recorded most of our conferences in preparing projects and would be glad to describe our experience with this device to anyone who is interested.