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Problems in Legal Education 1971

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Problems in Legal Education 1971 (A Survey)

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[EDITOR'S NOTE: Six problems in legal education, much discussed recently, were posed by the Editors of this Review to a number of the top educators in the legal world.

These questions were and are frankly difficult and controversial, but their answers are important to our system of legal education and to our society. Capsule answers given by these concerned educators are believed to be interesting and significant. Each is a personal rather than a representative opinion.

Brief answers such as these, of course, are not expected to be, nor do they pretend to be, complete or profound. Their purpose is to indicate succinctly the approach of some law school educators who may be considered "opinion makers" to difficult policy problems of legal education.]

I. Curriculum Structuring in Legal Education.

The Problem: At least two main, but different approaches to curriculum planning have been adopted by most American law schools. One approach, the more conventional of the two, provides for a fully structured course of study, consisting of a selected plan of required courses. Indeed, in some states, the supreme court, bar admission authority, or other accrediting agency prescribes many required courses, thus in effect making a structured curriculum obligatory for law schools. A second approach calls for a great deal of self-determination and freedom of choice among courses by law students. Following this approach, a law school will limit the number of required courses it prescribes, and offers many electives, thus allowing the student to pursue those areas which he finds most interesting.

Question: Which approach to curriculum planning do you believe will best prepare law students for the practice of law?

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Answers:

Prof. Bromberg: I favor self-determination in an age of increasing specialization of lawyers and increasing insistence by students on pursuing their own goals. However, self-determination works well only if (1) there is an ample supply of electives and (2) the courses are broad enough that the student sees many important interrelations in law. The main drawback to self-determination is not theoretical but financial; it is a very expensive curriculum to offer.

Prof. Conard: Neither approach, as you outline them, is desirable. A curriculum should be about half required and half elective. The required portion should be prescribed by faculties; not by courts or legislatures.

Prof. Forkosch: Neither, in response to the language used in the question(s) and the way in which these questions are phrased. You have set forth two extremes (a real extreme in the second question would be to permit complete selection among only electives). In my view there are "musts" or required courses, e.g., contracts, which cannot be evaded (not avoided) by students in the guise of "electives." These are essential for many reasons. However, these required courses should be boiled down to the minimum required and electives (within the financial ability of the school involved) offered subject, however, to guidance and counselling by faculty advisors. In other words a student should not choose an elective because it fits into his schedule, or there's an "easy" course (or prof) involved, etc. Electives are for definite purposes and ends and these should be adhered to.

Prof. Hager: Assuming, as the question does, that the curriculum should be planned to prepare students for the practice of law, and assuming further that the question refers to "general practice," the fully structured course will best prepare the students for legal practice. The instructors will, or should, know better which courses are more "practical" in the sense that the courses relate to what lawyers actually do.

Prof. Kelso: Curriculum planning for law practice is best approached by combining recommendations from practitioners and faculty members. The result will be a blend of electives and requireds. The primary value of electives is that they permit faculty members to teach in areas where they are most qualified. Required courses insure that some faculty members at each school will be qualified in areas practitioners judge basic to their work. Only a small number of credits should be available to students in a law practice curriculum primarily because the students find the area interesting.

Prof. Mayda: a) Minimum obligatory core: Introduction to law (jurisprudential framework): legal methods and bibliography; b) Various courses outlining the function of the law in problem areas: poverty, civil rights, urbanization, environmental, international and world affairs; c) Rest of the curriculum with minimum structuring so as to make sense and prevent shopping for easy professors and courses.

Prof. Mersky: I would favor the second approach, limiting the number of required courses and offering many electives.

Prof. Oleck: A balanced mix of substantive and adjective, theoretical and clinical, and mandatory and elective training is best, of course. What is the best mix is the real question. As to that, hardly two opinions will agree. In my opinion, the basic law course should require the 8 or 10 currently required (torts, contracts, etc.) courses, and still be able to offer about a third of the school's first-law-degree program in elective and clinical and specialty courses.

Prof. Probert: Since there seems less agreement than ever before on the "fundamentals" of legal education, a preponderance of electives wins my nod. There should be a required core, not just of subjects, but of teaching approaches as well, if nothing else to counteract student tendencies to take the easy way out come elective time.

Prof. Rosenberg: I do not have a categorical answer. A good faculty, good student body, high level of interest, good facilities, and good materials for study can well prepare for responsible professional practice, whether the curriculum is tightly obligatory or free-choice. In short, factors other than the degree of curricular structure are more important in good results. Structure vs. free-choice may play a role for some students, but in the overall, I believe it not a dominant factor.

Prof. Volz: A middle course, wherein the first two years of study are largely prescribed with broad electives and seminar offerings in the third year.

II. Tenured Professor Who Should be Dismissed.

The Problem: It long has been recognized that tenure provides an important measure of professional job security for educators and, in effect, preserves and perpetuates academic freedom. Without attempting to minimize the cogency of these points, some legal educators and law students have expressed concern that tenure now, often, intimidates administrators and serves as a shield for professors who *should* be dismissed. They contend that, unless the professor is guilty of blatant moral turpitude or is in violation of his contract (and often not even then), he cannot be dismissed, despite the fact that his performance as a teacher is less than adequate. They say that dismissal of a tenured professor for incompetence or bad character almost never happens despite many examples of abuse of the tenure privilege.

Question: What should be done about the professor who has tenured status but who should be dismissed because of incompetence or worse, when administrators fail to act?

Answers:

Prof. Bromberg: Faculty, students or alumni should urge the administrators to act. Short of dismissal, there are ways of encouraging and pressuring for improvement of the faculty member or mitigating the damages he causes, including (1) not raising salary, or perhaps even reducing it; (2) setting course load (high or low, depending on the circumstances); (3) assigning him to courses where he is most effective; (4) counselling on deficiencies and providing incentives to overcome

them. Some of these raise due process issues similar to those in dismissal. But if good cause is present, administrators should not hesitate to move for dismissal. They are in a much better position to act if there is a well established, fair system of student evaluation and peer evaluation.

Prof. Conard: (1) If administrators fail to act, nothing can be done. Recall by anyone else would destroy authority; (2) In order to help administrators act, systematic observation and evaluation of professors should be made by colleagues *and students.*

Prof. Forkosch: I don't like the statement of facts and even less the question as phrased. I start with the proposition that a teacher, like any other person, has a "job," but, further, that this "job" also has about it aspects which make it quite different from the ordinary one. For example, a punch-press operator doesn't have the coin-face fears that a teacher has if he confronts a witch-hunting authority; nor does the punch-press operator have to be on his toes daily and keep up with his field; nor does he have to have "approval" from anyone but a supervisor, i.e., one boss. And more can be said. I don't go into concepts of "free speech" and "freedom of the mind," etc., etc. All this is on the side of tenure in the strictest sense of the word. And the concept of tenure, springing as it does in the classical ages from such fears and freedoms, cannot be dismissed cavalierly when we think of the Joe McCarthy and current years. Your problem and your question "assume" a high degree of incompetence, and the conclusion follows that the prof "should" be dismissed, i.e., there is no doubt that he's bad, can't be aided, will not change, etc. In other words, he's a bad apple and so rotten that he'll spoil everyone he touches. Automatically there's no choice, he must go. So must the rotten judge. So must the rotten President. The Constitution provides for impeachment, and ditto judges. Our present method of impeachment, i.e., charges, hearing, etc., is limited (so you say in your problem) to situations incapable of being met. Which gives this rotten prof a lifetime sinecure to make others rotten. Well, why can't (a) he be transferred; (b) given an office job; (c) etc., as to any other reasonable alternative (don't forget his peers elected him to this position). For example, if he's become senile you just don't fire him willy nilly. And, I will confess, finally, that if, after all reasonable alternatives have been tried and failed, and that's it, then, as with Pope, "lest one good custom corrupt the world," he must be let go.

Prof. Hager: The question, in asking what should be done when administrators (which I assume includes the Dean) fail to act, leaves any solution of the problem to the faculty and students. I see no legal solution that these two bodies, individually or together, can provide.

Prof. Kelso: Since it's ordinarily up to a professor-turned-administrator to decide whether another professor is competent, the question, as phrased, is like asking "what should be done about the accused who is guilty but who is acquitted by a jury?" The administrator gets information from a number of sources and ordinarily is in the best position to judge. However, assuming the question's unlikely premise, I suppose the answer must be to dismiss or otherwise sanction the administrators

for not doing their job. Since you may really be asking how faculty, alumni, or student input can best impact on the situation, I should note that a University Ombudsman can be a useful person.

Prof. Mayda: In our school, a recommendation of personnel committee on which the dean would not act could be carried to the faculty-student meeting. Their affirmative vote, not acted upon by the university administration, would give basis for a court action. (Very hypothetical situation!)

Prof. Mersky: I believe professors with tenured status should be dismissed because of incompetence.

Prof. Oleck: Some administrators' natural distaste for unpleasant duties, some facultymen's human tendencies to concentrate on privileges more than on obligations, recent decisions of some judges, and a vague public resentment of endlessly increasing fund drives and taxes, may result in solution of the tenure question by legislated control by politicians instead of by academic people. Meanwhile, of course, administrators should be supported in doing what they are duty bound to do; and removed if they will not do that. Ultimately, the students are the ones injured most by retention of "bad professors," and the students can complain or even bring legal action.

Prof. Probert: Administrators are supposed to be intimidated by tenure arrangements, or if you prefer, cautious and respectful. I would far rather have a few incompetent teachers around than control of job status by administrators or politicians or benefactors. If a man is an incompetent teacher—and if the criteria are clear enough—then the faculty should rehabilitate him or get him another job. If he is near retirement, he might be paired in team-teaching efforts.

Prof. Rosenberg: The assumption of the question is that a tenured professor has been shown (by fair procedures) to be unfit. I assume the showing has been made before a duly established tribunal and the tribunal has made the finding of unfitness. If the rules provide for dismissal in that event and the administrators fail to do so, they can be compelled by higher university or public authorities to act properly.

Prof. Volz: Student action is the only course. It may take the form of a committee calling on the dean or the president of the university or a faculty rating system.

III. Academic Waivers for Disadvantaged and/or Minority Groups.

The Problem: A relatively new concept in the area of legal education, as in education generally, is that of academic credential waiver for disadvantaged and/or minority group students. This concept provides for two different standards for admission into law schools, a lower (or at least a different) standard being applied for disadvantaged students. Critics of academic waiver contend that this policy is a breach of responsibility on the parts of America's law schools. They argue that law schools have the responsibility of training professionals, and that a single standard of excellence must be required for admission to law schools. Proponents say that reverse discrimination is owed to black and other disadvantaged people.

Question: Should academic credential waivers in admissions policies be granted by law schools?

Answers:

Prof. Bromberg: There are at least two distinct arguments for waivers: (1) the need for more minority group members to enter the profession, and (2) the probability that some (many?) minority group members have potential as good as anyone else, but less developed because of poverty, poor schools and other forms of discrimination. The first argument suggests that anyone likely to meet the minimum standards for entry into the profession should be admitted to law school until a fair balance is obtained in the profession. A school with selective admissions and aspirations to excellence will have a hard time justifying lower standards merely to fill a sort of quota, and I cannot advocate this sort of reverse discrimination. The second argument provides a much better justification for admission waivers. But I think it must be based on a determination that waiver students will be as good as average students in the school by the time they graduate, and a reasonable probability that this can be done. It may mean tutorial, extra class sessions, special lectures or other supportive arrangements. With this kind of commitment, I'm greatly in favor of waivers.

Prof. Conard: There should be no "waivers," but very different weights should be given to test scores of minority students. In fact test scores should be given less weight than now for *all* students.

Prof. Forkosch: Yes, to some extent, and in a limited fashion. Notice, however, that it is only "admission" which is involved. Thus graduation is kept on whatever high plane the school involved desires to maintain it. What is being done is to permit Johnny Underprivileged the opportunity to compete, but in the competition he must keep up with the others. I won't go into why I think so. But, coupled with such admissions is the question, to what extent are admissions policies to be reduced? This is another problem. Also, there is a "must" involved—you just don't let Johnny Underprivileged enter and then say, swim. Throw him into the water but let him wade, give him lessons at the outset to bring him up to so-called par, or aid him as he gets along in the first year (perhaps even a part of the second year). In other words, just admitting him won't help unless he gets some additional aid. What this is, how administered, etc., are other problems.

Prof. Hager: I must answer no with considerable reluctance and sympathy for the disadvantaged. I would answer "yes" if the school had the human and other resources to work closely and intensely with these disadvantaged persons so that by graduation, they would be on more of a parity with those who entered with better qualifications. This is not true, however, in most of the law schools of the country at the present time.

Prof. Kelso: Waiver of academic credentials should not be granted because of background to anyone who lacks minimum competence. However, a bar better suited to society's needs may be produced if academic performance is not the sole criterion for recruitment and admis-

sion to each law school. As a general proposition, however, I think we should strive to enlarge the number of interested high-performance students from disadvantaged and/or minority groups and so be in a better position to enlarge the background-base of the profession.

Prof. Mayda: Provisional admission; academic and financial help to catch up and stay longer in the school. But *not* double standard!

Prof. Mersky: Yes, I do think academic credential waivers in admissions policies should be granted.

Prof. Oleck: An emergency situation requires (and justifies) emergency remedies. We face such a situation in our society. Of course, use of a different standard for blacks or other special groups might be said to violate the technical aspect of the rule of "equal protection of the laws," though not its spirit. But we ought to waive the rule, by general consent, at least for a short while, in order to start to cure the disease of bigotry and racism. This is not reparations, but is simple self-interest if we still view our society as a single nation and its members as "fellow citizens"—not to mention "fellow humans."

Prof. Probert: There is no reasonable alternative to experimentation with admission criteria. Until suitable national criteria are achieved, then ad hoc experiments are necessary.

Prof. Rosenberg: My opinion is that discrimination on grounds of race is wrong. Period. Yet the number of students of disadvantaged backgrounds in better law schools must be increased. One way out of the dilemma is to set up a color-blind "socially conscious division" in the law school, admitting a proportion of the first year class on grounds of potential contribution to melioration of social problems, based on background, achievements, and personal traits other than the standard ones. These should be as objective as possible. Once admitted into the school, the students in the "socially conscious" division would not be distinguished from normal admittees and only the individuals in question would know the separate basis of their admission. Once in, they would have to meet the school's standards.

Prof. Volz: In admissions the objective must be to determine the true ability of the student. If a poor LSAT score is based on lack of experience with this type of test or to slow reading, an adjustment in test score is not a waiver but the application of a truer standard of measuring individual worth. Remedial programs and adjustments as suggested above are defensible; a double standard is not.

IV. Law School Discipline Codes.

The Problem: Law student-drafted codes of rights and responsibilities, seeking to regulate student conduct, advocate intra-disciplinary measures to be executed by law student judiciary boards. Most school administrators, however, favor administrative control over student discipline. There is disagreement about where prime disciplinary authority should be placed.

Question: With whom should disciplinary authority rest, and to what extent? What kind of disciplinary code do you advocate?

Answers:

Prof. Bromberg: I'm for authority in the students, preferably exercised by a prosecutor, court, etc. elected by students or appointed by elected students. If this can't achieve reasonable discipline, I doubt that administrative or faculty action can. I don't see any universals for the kind of code; it should depend on the school, the students and the situation.

Prof. Conard: Disciplinary authority should be apportioned—on some subjects exclusively to faculty, and some exclusively to students with some shared.

Prof. Forkosch: The way the question is put, in the light of the problem presented, controls my response. I favor giving students disciplinary authority as between and among students when "student conduct" does not unduly affect others or create any school-community problems. Within their own activities let them control.

The problem, however, is what happens when students either seek authority and control outside of this area I have mentioned, or press in ways other than speech, petitions, requests, etc. for this authority. Here two groups are involved, the students on the one hand, and the administration on the other, with the public a silent spectator at the outset. On this problem I have no a priori answer but desire to check out the particular facts in a particular situation, etc., etc., with the basic view that students must be encouraged and not stifled but only up to a point—that "point" is one I have not thought through and "created," if ever I can do this.

Prof. Hager: The ultimate disciplinary authority should rest with the administrators who cannot completely surrender this authority. I would favor a code such as my school has—one prepared by the students and approved by the faculty with a student board having almost exclusive jurisdiction over violations by students of the honor code. The faculty would serve as a review board and could suspend the code at any time that it is obvious that the students are not implementing it properly.

Prof. Kelso: The authority to discipline should rest with the person or groups responsible for teaching the relevant behavior and/or attesting to its existence. This calls for some division and sharing of authority between faculty, students and administration. I doubt that there is any one "right" pattern, so long as the pattern which exists is known and respected. Continuity with past customs is important in this respect, as is periodic re-examination.

Prof. Mayda: Obviously it must rest with the students in that it gives them a higher sense of responsibility. Administrative action must come in where the students fail to maintain implied or explicit minimum standards.

Prof. Mersky: I advocate the student disciplinary code.

Prof. Oleck: Drafting of disciplinary codes should be done by experts in drafting (law professors) with law student collaboration on an almost, but not quite, equal level of adoption-vote power. Ultimate disciplinary power, as a practical matter, should be vested in law school ad-

ministrators, with student and faculty cooperation provided for. Some matters, such as purely-personal-taste-conduct, should be governed entirely by student-drafted and student-enforced rules and judiciary organizations.

Prof. Probert: Certain kinds of disciplinary problems are as well handled by students as anyone, such as Stealing or Cheating. The current worry concerns sanctions against political activity on campus. Because it is such a mixed bag, discipline should not be solely in the hands either of administration or students. They and the faculty should all be represented. Faculty should not be by-passed because their interests often are subtly involved.

Prof. Rosenberg: A wholly student-set, student-implemented code, so far as professional responsibility and conscience of the faculty were not abdicated. For example, if the student code or tribunal should fail to enforce sanctions against students who assaulted students or faculty, disrupted classes, etc., the faculty should reserve a function.

Prof. Volz: A student honor code applying to law examinations, to use of the library, and to respect for the property of others should be administered by the law students themselves and they should make the recommendations concerning the disciplinary action to be followed, which normally should be observed by the dean and faculty. On matters not covered by an honor code the decisions should be left to the faculty and consultation with a proper student committee if appropriate.

V. Clinical Empires in Legal Education.

The Problem: Law schools traditionally have been viewed as mainly "academic" centers, where students learn the theory and philosophy of the law. Recently, however, some law schools have emphasized "clinical" or "how-to" programs, in an effort to train students in more practical aspects of law practice. Proponents of heavy clinical programs contend that internship and work-study programs are the best preparations for practice. Traditionalists, however, argue that law school is the only opportunity to learn the theories and philosophies of law, and that practical experience should be obtained after graduation. The trend seems to be towards increasingly greater clinical emphasis, while many faculty members and administrators seek to head or work largely in their schools' clinical programs rather than in teaching the traditional courses.

Question: Are law schools going too far with their clinical approach to legal education, or not far enough?

Answers:

Prof. Bromberg: I have insufficient knowledge to know whether law schools are going too far, or not far enough. But I am convinced that "theory" can be taught far more effectively in "practical" context. On this basis, I think our school is not going far enough, and I suspect the same is true most places. The important thing is to overcome the separation of "theory" and "practice" by teaching them in a unified way.

Prof. Conard: Yes! Some are going too far, and some not far enough. The increase in clinical work is desirable if coupled with: (1)

Instruction; (2) Supervision; (3) Evaluation. Without these, it is a fraud.

Prof. Forkosch: I am a "bug" on theory, reasoning, and applications to practical problems, but I am also a "bug" on the practical applications of theory. I find it impossible to learn in a vacuum, and also find that whatever I have learned (in theory) assumes different shapes, degrees, depths, and even concepts once applied to the test. I am therefore a "bug" on work-study programs. I just don't see why an either-or approach is required. I want both. I teach reasoning in law, and also practice in law. Both make the lawyer. Both condition the lawyer. Both make the man and the citizen. I reject either one or the other. To me the only question is how and when the clinical will enter to illustrate and make meaningful the theoretical.

Prof. Hager: The answer would depend upon the goal (or goals) of the particular law school concerned. If the primary goal is to train students to practice law, the law schools are not going far enough with the number, and quality, of clinical approaches to legal education. One great difficulty is that most law schools do not seem to have decided upon what the goals of legal education should be and consequently, try to be all things to all students.

Prof. Kelso: To the extent that lack of resources is slowing the development of clinical programs, the law schools are not going far enough. To the extent that programs are being set up simply because some grant money is available, the schools are going too far. If clinical programs involving actual practice are being continually evaluated and improved, as the schools have tried to do with other innovations, the schools are going just far and fast enough.

Prof. Mayda: The vocational tendencies in American law schools are still strong and, in a rapidly changing world, detrimental. We need to form legal *minds* able to face and solve problems 30 years into the unpredictable future. What goes against, including overemphasis, is wrong.

Prof. Mersky: I feel law schools are going too far with their clinical approach to legal education.

Prof. Oleck: Some too far, but some not far enough. A good proportion of clinical experience is healthy; too much will tend to make mere mechanics out of people who should become legal "artists." Faculty and administrators' tendencies to adopt fads and to build empires are about as strong, or small, in this as in other areas of legal education.

Prof. Probert: Clinical expansion is long overdue, but it should not take command. Ideally there should be a combination of approaches, for instance by a teaming of the generalist teacher and the specialist practitioner. The dichotomy between theory and practicality is illusory. The specialist merely tends not to be able to articulate his underlying theory. Neither he nor the student are apt to generalize beyond the ad hoc by themselves, thus the need for one skillful in that dimension, relating little pieces to the bigger fabric.

Prof. Rosenberg: As to clinical programs, law schools seem not the best setting for them. If they are more important than learning drafting,

writing, reasoning, analysis, etc. in a classroom setting, the law schools should eliminate the final half-year or year and release students to the more important work in law offices, prosecutors' bureaus, legal aid and defender offices, etc., instead of charging students heavy tolls in the form of tuition for the privilege of passing through the law school building on their way to their clinical jobs.

Prof. Volz: The problem to date has been that an insufficient number of law teachers have been interested in participating in clinical programs. Certainly, law schools have not gone too far as a group. Some have not gone far enough. Others are about right.

VI. Rights of Non-Tenured Teachers.

The Problem: The right to be informed as to charges, and a hearing, for a teacher who is to be dismissed, are inherent in the concept of tenure. The right to be told the reason for dismissal has long been recognized as primary in tenured status. Of late, however, some non-tenured legal educators have claimed some of these rights of "tenure," arguing Constitutional or moral grounds—such as the claim of right to a hearing before non-renewal of even a one-year untenured contract of employment.

Question: What "tenure-type" rights should be afforded to non-tenured law professors?

Answers:

Prof. Bromberg: Common courtesy calls for a statement of reasons when a contract is allowed to expire. The school needs to be able to articulate its reasons, if only to know whether it has identifiable standards and consistent applications. It should want to help the man understand his shortcomings, so he will profit at least to this extent from his work at the school; this is a part of the school's educational function. I strongly favor a statement of reasons, but I don't see it as a legal or moral right of the faculty member.

Prof. Conard: Non-tenured professors should be protected against: 1) Expectations of removal which are not well-founded; 2) Ambiguity in continuity of position; 3) Suspension or discharge during contract period; 4) Excessively long probationary periods.

Prof. Forkosch: I sympathize with non-tenured teachers. They are in some type of infernal limbo during their hanging period. They must be obsequious and yet not so, conservatives and yet libertarians, etc., etc., pleasing all and displeasing none. I'd hate to be in their place today. How they can teach effectively in such an atmosphere is beyond me. I look at it all in the light of students and school. We are here for the students, and it is effective teaching which must be the goal. If we permit non-tenured professors to live in this fashion they'll teach in this fashion. And yet we can't just hire someone, not as yet "proven" (whatever that means), and give him tenure. A reasonable mean permits "continuation" but with constant (periodic) conferences with others who must vote on him, valuations in open so that he can correct himself, and, ultimately, some opportunity to present his views before his judges. Depending on

the number of years involved (say four years before tenure is to be voted), I'd insist upon giving him a two-year (50%) continuation, then a right to be told why his contract for one year would not be renewed and his right to file papers in refutation. But that would end it for the third or fourth years, save that for the last year he should be able to meet his judges face to face. The third year would thus be the showdown year, for here he can't meet his judges but can only present his "case" and permit the judges the opportunity to re-check and change their findings and decisions. But in the fourth year he has now obtained this additional "right."

But for a one-year non-tenured contract in a four-year situation I don't think any "right" as above should be involved.

Prof. Hager: The non-tenured professor should be entitled to be told the reason his contract is not being renewed, but he should have no other tenure rights such as formal charges and a hearing to determine if he should be dismissed or retained.

Prof. Kelso: Non-renewal should be possible without a hearing, if mistakes are not to become living monuments. However, non-renewals should not come as a surprise, and notice should be given in time for the teacher to have a reasonable opportunity for securing other employment. Because a renewal judgment should be based upon adequate observation and evaluation, perhaps the minimum contracting time for full-time teachers (other than visitors) should be two academic years.

Prof. Mayda: Expectation of a professional evaluation of their performance. Since the same people who hired a man will judge him after his first year, they are not likely to suddenly become arbitrary. Unless the man acted in a fashion not revealed before he was invited, e.g., instead of devoting himself to his formation as a law professor he becomes an activist *inside* the school. This I believe is his right as a citizen, but does not impose any corresponding duty on the school.

Prof. Mersky: They should have the right to be informed as to charges, and a hearing.

Prof. Oleck: A teacher employed on tryout basis is morally entitled to be told of his deficiencies if not to be re-hired, and legally entitled not to be fired for no sound reason. But a requirement that he be given a full-scale hearing before he can be fired is fatally restrictive on already harried administrators. Until he earns and is granted tenure, a new teacher should not have the privileges of tenured status. The old rules as to test-year hiring are imperfect, but better than rules giving tenured status in effect at first hiring of all new teachers.

Prof. Probert: Whatever else tenure may be, it is an allocation of power to faculty decision. Experience on five law faculties, some of it short, some lengthy, convinces me that faculty should have some sort of say regarding the man on probation, the non-tenured individual. The faculty should cast the decisive vote. But the administration should have the power to initiate a more extensive consideration by means of a review within the college (for instance) in question; i.e., a hearing. The probationer may not wish a review, preferring to slip out of the picture,

etc., but he should be recognized as having a right in any event to know why he is dismissed and to have some sort of review procedure where his side of the situation may be heard. Perhaps the best alternative and one readily foreseeable is a professors' union.

Prof. Rosenberg: Notice in advance of the grounds on which tenure will be decided, provision of a careful record of the basis of decision, and an opportunity for internal review via set procedures.

Prof. Volz: Counselling to correct deficiencies as the latter are disclosed. An oral meeting with the dean explaining the reasons for dismissal.