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Book Review

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untary hospitalization. One story that highlights the formidable communication problem between lower class "street people" and foreign doctors is of the Japanese doctor who asked a prospective patient, "What does mean, a stitch in time gathers no moss?" The patient, who was dumbfounded by the question, was eventually committed.

The imperative of the therapeutic state is health. The "mentally ill" are invited, then pushed to treatment by well-meaning judges, psychiatrists, and lawyers. But as is all too clear, the casualties of this undertaking are the subjects of the stories Ennis tells. The warning of Justice Brandeis resounds throughout the text:

> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest danger to liberty lurks in insidious encroachment by men of zeal, well-meaning, but without understanding.[11]

*Reviewed by Miles J. Zaremski**

NEW DIRECTIONS IN LEGAL EDUCATION, by Herbert L. Packer and Thomas Ehrlich, with the assistance of Stephen Pepper. New York, McGraw-Hill, 1972. 384 p. $10.00

New Directions in Legal Education represents another attempt to examine the function, purpose, and direction of legal education. The book was originally prepared by Professors Packer and Ehrlich, both of the Stanford Law School, as a report for the Carnegie Commission on Higher Education. The reason for its publication is indicated in a note on the reverse of the title page:

> The Carnegie Commission . . . has sponsored preparation of this report as a part of a continuing effort to obtain and present significant information for public discussion. The views expressed are those of the authors.

The authors in turn state in the preface:

> We make no pretensions that this study is exhaustive. We do try to consider, at least briefly, the major issues that in our view are unique to law training as opposed to other areas of higher education . . . The "research" on which this study is based did not include field studies, questionnaires, or opinion polls. Rather, our method consisted of asking the

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[11] Olmstead v. U.S., 277 U.S. 438, 479 (1928) (dissenting opinion).

* Of Chicago, Illinois, J.D., Case Western Reserve University, 1973.

> Advisory Committee to help frame some salient questions and then to suggest where the authors may have erred. In short, we tried to identify and think through the present and prospective problems of legal education.

This reviewer finds the above statement to have contained a wise choice of words, for the book contains only ninety-one pages of original material, including a review of the 1971 Association of American Law Schools (A.A.L.S.) report on legal education known as the *Carrington Report*, "Suggestions for Further Reading," and "References."

The remainder of the book contains two appendices.[1] There is a technical problem in locating all of the items in Appendix A, because only the first one is listed in the table of contents. The book has no index.

Since the materials in the appendices have been thoroughly reviewed, commentary here would be superfluous. However, this material is employed in an apparent attempt to supplement the discussions and conclusions that Ehrlich and Packer set forth in their portion of the book. Furthermore, even though the material in the appendices serves to illustrate various opinions and viewpoints from past decades on legal education, its physical placement in the book seems inappropriate. The preface states that the authors hope to identify and think through present and prospective problems of legal education. To achieve this goal, the better approach, in terms of the physical structure of the book, should have been to present the historical matter first to show the development of legal education and then to have updated that material with the authors' own observations and recommendations.

Packer and Ehrlich briefly examine most aspects of legal education, from specialization and the training of paraprofessionals to the role of clinical education and the provision of quality legal care. Though they commence by predicting the future of the legal profession, one feature emerges which is characteristic of their material. The statements and commentaries are neither enlightening nor supported by hard statistics. As an example, in discussing the feasibility of specializing in a particular area of legal practice, Packer and

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[1] Appendix A: 1) The *Carrington Report* with its appendices:
- a) An edited version of Reed's *Training for the Public Profession of the Law*, 1921.
- b) A review of Reed's work by Stolz.
- c) An edited version of Currie's *The Materials of Law Study*, 1951, 1955.
- d) Mazor's "The Materials of Law Study: 1971."

Appendix B: Woodard, "The Limits of Legal Realism: An Historical Perspective."

Ehrlich refer to the work done by a California Committee on Specialization. They note that the results of the project carried on by this committee ". . . are probably an adequate reflection of the present and somewhat ambivalent attitudes of the legal profession toward qualification of specialists." Another example of a conclusion unsupported by any evidence within the book is the authors' statement with respect to specialization, "We think that, notwithstanding resistance by elements in the bar, both group legal practice and certification of specialists are almost certainly coming."

The next chapter of the book concerns problems of legal education. The authors perceive the major symptoms of these problems to be "malaise and discontent" among law students and faculties. The chapter is centered around a brief overview of the context of legal education: the characteristics of a quality lawyer; the common structure and role of law schools; and the historical development of legal education. The exploration of these areas seems derivative in the sense that (once again) the authors have added little information to the literature on legal education in this particular area.

In addition, Packer and Ehrlich devote little space to one of the most topical areas in legal education today. This is the teaching of law. This reviewer feels that dissatisfaction with the casebook and Socratic methods has fostered more student discontent than any one variable in legal education. A brief examination of the Socratic method is presented, with the conclusion that after the first year of law school it creates apathy, hostility and boredom but serves the preservation of the professorial role and professorial self-esteem at the podium. The problems of the case method are deserving of much more detailed treatment. Additionally, there is not even the suggestion that teaching methodology is a source of problems with the case method. It is not even hinted that a major problem with legal education, as indeed with much other higher education, is the lack of mastery of teaching techniques by those who would be classroom teachers.

Rather than detail the advantages and disadvantages of the case method, the authors are persuaded that *secularization* is ". . . the prime intellectual cause of the contemporary malaise in legal education." They describe *secularization* as the attempt to view the law as a technological tool with which to identify social ills and to shape social policy. The authors vehemently disagree with this process and state that "Law . . . is not a science, but an art, a craft. . ." Because of this belief, they would place more emphasis on the intellectual aspects of a legal education than on the practical and would agree with Woodard that ". . . the higher goal of law is justice, a goal that is never quite reached." The authors, in three short paragraphs, dispose of the entire question of *secularization*. This reviewer feels com-

pelled to agree with the authors' statement: "Much of the foregoing is an over-simplification."

One additional comment is necessary here. The reader is faced with the statement that law school curricula focuses upon the practical (used by the authors to mean the preoccupation with individual problems rather than with social and purely philosophic problems) and neglects philosophic inquiry into the law. This conclusion would also place little emphasis on the whys and wherefores of case instruction and the needs and expectations of incoming as well as matriculating law students. Student dissatisfaction arises not from the lack of philosophic inquiry but rather from an improper balance between methodology and pragmatism. Writers like Ehrenzweig have repeatedly stressed alternative forms of educational material. These include case digests, case-textbooks and texts not stressing appellate opinions. The pragmatists would maintain that the primary emphasis should be placed on goals (with the obvious one being that of the ability to practice law) and not just thought or analyses which are the means to those goals.

New Directions in Legal Education contains a brief chapter on clinical education, noting that current popularity of such programs is based on the following considerations: that legal education should be more relevant to current social needs; that because these programs are removed from the confines of the law school they are perceived as extracurricular by the students and as requiring no revision of the current curriculum by the professors; and the creation of the Council on Legal Education for Professional Responsibility (CLEPR), which has made substantial grants to law schools for clinical programs.

Another point made by the authors concerning clinical experiences is that such programs provide law students with unique experiences not offered by a traditional curriculum. However, because of the expense involved in administering them and because they may often involve ". . . intellectually low level work . . .", the authors feel that their value is dubious. This reviewer would not concur with these conclusions. No mention is made of the fact that many advocates of such programs feel their expense is no higher than that of the seminars so prevalent in the second and third years. Additionally, this reviewer feels, based upon experience as a student in a clinical program, that clinical education must play an important role in a student's education. It should be an obligation of any law school to provide an opportunity for those students who are so inclined to experience first hand the realism of practicing law. Surely a valid analogy can be made between the law student and his professional counterpart, the medical student. The latter is exposed quite early in his medical school career to patients. Quaere: Are there any neg-

ative effects from the process of having the law student consult and advise clients in legal clinics?

It may be that the authors' comments on clinical education are influenced by their positions as purely classroom professors. In other words, the teacher of traditional law courses would not readily accept the idea that students must be exposed to the practice of law. The point has often been made that full-time classroom professors feel that clinical courses derogate from the real importance of a legal education, which is to comprehend legal theory, substance and procedure. Some professors would also feel that the law school curricula should not be burdened with the responsibility of providing practical experiences because the student will learn all that is necessary for practice within a short time after having been admitted to the bar (or so the argument goes). It is worth mentioning that no reference is made to the current writings of the various leaders in clinical education. Also missing in this discussion is reference to student reaction to clinical programs, though the authors do state that often clinical programs rejuvenate the book-weary student and renew his euthusiasm for law.

The remainder of the first ninety-one pages consists of a cursory review of the *Carrington Report,* a chapter on the role of the law school within the university, a chapter on the financing of legal education, and a chapter discussing the length of a law school education. With respect to the costs of educating a law student, three sources of financing are recommended: development of various supporting constituencies (both within and without the profession, both public and private); the development of institutions to facilitate individual borrowing; and development of mechanisms for institutional borrowing. This material represents the majority of feasible alternatives mentioned by other writers concerned with financing legal education.

The merits of a three or four year undergraduate education are reviewed together with the possibility of condensing law school into two years of academic study. However, the authors seem to suggest that the length of a legal education will ultimately depend on the professional goals and individual needs of every student. Messrs. Packer and Ehrlich also offer the following choice to the legal profession:

> . . . either diversify the three years [of law school] so that the student acquires the rudiments of an understanding . . . not merely of what has . . . been understood as 'the law' but of the interrelations of social knowledge with the law or (b) reduce the minimum time-serving requirement to two years with a resulting emphasis on doctrinal analysis.

This statement should be evaluated in conjunction with their recommendation that law schools offer the following degrees: a J.M. (or M.A.) for one year of law study; a J.D. as the first general law

degree; and a J.S.D. for advanced, scholarly work. The above alternatives deserve attention because goals and future plans change for many students after the first year or even after the first semester of law school.

The authors conclude their discussions by offering two premises. The first is that law schools should *diversify,* for no single method can be imposed on legal education in order for it to become effective. This is particularly emphasized by their conclusions on clinical education and degree options. The other premise is that each law school administration must decide what the most appropriate academic program will be for its students. However, the book does not attempt to aid the individual institution in establishing a set of guidelines or model for effective curriculum development. Although the authors refer to the standards of the ABA Committee of Accreditation, it is indicated that these standards will be revised too slowly to accommodate new planning in any helpful manner. It begins to appear that further study is needed to determine viable guidelines for curriculum changes — and it is worth questioning whether the authors could have helped serve such a purpose or whether they would accept and endorse the standards set forth in the *Carrington Report.* The statement in the preface that this study was neither exhaustive nor based on extensive research was a warning for readers. To state that *New Directions in Legal Education* contains any major revelations would be to overlook concepts and ideas already in print. In fact, even the title is misleading and was probably chosen more for effectiveness than description. The authors themselves suggest nothing new. They do present an extremely succinct overview of the current state of legal education, but they propose nothing that has not already been proposed. They merely report.

Certainly, in the ninety-one pages of original text, the authors have hardly allowed themselves room to develop themes; for example, the past history of legal education is represented by a mere eight paragraphs. Apparently the authors are satisfied that the material in the appendices adequately treats those areas that they do not develop. It is worth commenting, however, that the physical format of the book is very helpful. There are boldface marginal headings and italicized paragraph headings indicating subtopics, and important points are numbered in the text.

Another value of Packer and Ehrlich's effort has been to reproduce well-known writings on legal education published over the last fifty-two years. Such a design should be viewed as a continuum of scholarly thought dating from Reed's descriptions in 1921 on the development of legal education since the latter half of the 19th century. It may be noted here that an abridged edition of this book has now been published, containing only the first ninety-one pages by Packer

and Ehrlich.[2] However, by reading the original edition, readers should be able to determine whether legal education has changed over the last century, if so, for what reasons, and should also be in a position to consider if, when, and how, legal education and law schools will have to change in order to meet the expectations of law students and the needs of a society that the legal profession must serve.

*Reviewed by Alan Miles Ruben**

FACULTY POWER: COLLECTIVE BARGAINING ON CAMPUS, edited by Terrence N. Tice. Ann Arbor, Mich., Institute of Continuing Legal Education, 1972. 368 p.

This book is the outgrowth of a conference convened by the Institute of Continuing Legal Education in the fall of 1971 to consider the legal, economic and institutional implications of the newly emergent phenomenon of collective bargaining in academia.[1] The potential for faculty negotiation is not insignificant since an estimated one-third of the million persons employed in the nation's more than 2,600 institutions of post-secondary education can be classified as "faculty." Further, as Dean Theodore St. Antoine points out in his prefatory remarks, the movement toward unionization and the introduction of the bargaining process is likely to affect higher education profoundly as professors obtain increased political power as well as increased participation in governance and economic benefits.[2] The volume's appearance at this time is therefore most welcome.

Thanks to the organizational discipline imposed by the editor, this work, unlike so many other collections of conference papers, is

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[2] New York, McGraw-Hill, 1973. 91p. $10.00.

* Member, Pennsylvania (Philadelphia) and Ohio (Cleveland) bars; Professor of Law, Cleveland State University College of Law; General Counsel, Ohio Conference, American Association of University Professors. Member; National Panel of Arbitrators, Federal Mediation and Conciliation Service.

[1] The first election of a faculty collective bargaining representative for a four year institution appears to have been conducted in 1969 pursuant to petition by professors at Central Michigan [State] University under the Michigan Public Employment Relations Act, MICHIGAN STAT. ANN. §§17.455(1)-17.455(16)(1968). Community college representation elections have been held at least since 1965 when teachers at Henry Ford Community College organized and invoked the procedure of the Michigan statute.

[2] Regretably, however, none of the contributors were moved to accept Dean St. Antoine's gambit and discuss the political ramifications of professorial organization. Two other observations by Dean St. Antoine require some comment. Economic studies to which he refers purport to show that the share of the country's aggregate income going to wage earners as a class has remained constant and unaffected by unionization. These analyses should not be misinterpreted. They do not necessarily lead to the conclusion that collective bargaining has not resulted in compensation levels for a particular unit in excess of that which would have prevailed in the absence of unionization. Neither does Dean St. Antoine's interesting reference to the law school experience, where relatively high ratios of students to instructors are the rule, lead to the conclusion that the productivity of educators may govern faculty salary structure differentials. "Productivity," as thus measured, would not appear to explain for example, the enviable compensation scales of medical schools where high ratios of faculty to students seem to predominate.