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Boredom in Legal Education

Ralph Slovenko*

I

Introduction

THE PRESIDENT OF A MIDWESTERN UNIVERSITY recently remarked that three things are essential for a happy university: sex for the students, parking for the faculty, and athletics for the alumni. Learning is no longer considered entertaining.¹ Some say that our universities today direct primary attention to the problems of sex, parking, and athletics, and they call our universities "flop houses." In recent years, there has been book upon book, some of them best-sellers, on the subject of boredom in the university. Apparently everything is not quite right.

The university, founded in the Middle Ages, is generally recognized to be our oldest social institution.² But this is not to say that the universities of today are identical to the universities of the Middle Ages. Practical subjects, to the chagrin of many, have been brought into the modern university. In early days, architecture, engineering, and the like were left to the guilds. Moreover, the early universities had no board of trustees, and no student societies, no athletics, no glee clubs—none of those "outside activities" which are the chief excuse for the inside inactivity in many of our schools.

When American universities entered upon the several fields of professional training, they faced, as Professor Goebel put it, the task of establishing a title by adverse possession.³ Prejudice, rooted in our cult of the self-made man, was pervasive against

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[*Editors' Note:* This paper was presented in the Seminar on Legal Education conducted by Professors Sheldon D. Elliott and Robert A. Leflar, at New York University School of Law, in 1959.]

¹ "The Athenians were, for a while, able to see learning as entertainment, and during that time accomplished what was echoed through twenty-five centuries. Some Italians, Frenchmen, Englishmen accomplished it during the Renaissance." George Williams, *Some of My Best Friends Are Professors* 187 (1958).

² The first school of reputation was that of Salerno, near Naples, which had a famous medical school as early as the ninth century; the next school of note was that of law at Bologna; and the third of the great schools, in time, was that of philosophy and theology at Paris. The order of development is interesting as it reveals the order of man's needs and interests. See Charles Haskins, *The Rise of Universities* (1923); see also Gabriel Compayre, *Abelard and the Origin and Early History of Universities* (1893); 1 Rashdall, *The Universities of Europe in the Middle Ages* 119 (2d ed. Powicke and Emden, 1936); James J. Walsh, *The Thirteenth, Greatest of Centuries* (12th ed. 1952).

³ Goebel, *Preface, A History of the School of Law of Columbia University* (1955).

formal schooling.⁴ As to training for the practice of law, office apprenticeship was the mode from the time of the settlement of the country until 1921, when the American Bar Association recommended graduation from an approved law school. American law schools, when they entered the scene, looked toward the vocational requirements of private litigation. The method of instruction and the courses offered were adapted to this purpose. During recent decades, lively concern has been manifested about the content and methods of legal education.

The accomplishments of the American law school are notable.⁵ It is today one of the more exciting places on the American campus, but it is not beyond reproach. The law school cannot rest on its record. It must make reckonings for the future.⁶ It is essential to examine the interests of the law student, faculty, and alumni, and it will be convenient to begin with the student.

II

The Student

Fortunately or unfortunately, sex for the student is not the panacea to avoid ennui in legal education. The hard and isolated study involved in the educational process may for some students be dull at times, but this is not the type of boredom which disturbs legal educators. The concern is over the failure to furnish a "house of intellect." Today, a diploma is perhaps more a recognition of the student's endurance than of his intellectual achievement.

The fault does not lie entirely with the administration and instruction. Charles Malik of the United Nations was not entirely right when he said, "Make sure of your teacher and forget about everything else." Education is a dialectic process, involving an interaction between teacher and student. The teacher gets what he gives, and so does the student. A large proportion of those who enroll in the law school lack aptitude or a genuine urge for

⁴ Before the Middle Ages, learning was an individual matter. Socrates gave no diplomas. See Charles Haskins, *The Rise of Universities* (1923).

⁵ See Brown, *Lawyers, Law Schools and the Public Service* (1948); Harno, *Legal Education in the United States* (1953); Dunbar, *The American Bar Association Standards and Part-Time Legal Education*, 3 *Nat. J. of Legal Ed.* 26 (1940). "Quite clearly it is more popular to criticize organized legal education in this country, to emphasize its alleged shortcomings or failures, to urge corrections and reforms—than to praise it or any accomplishments in its name." Sturges, *Legal Education—Some Compliments Due It*, 1957 *Wash. U. L. Q.* 1-16.

⁶ See Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 *J. Legal Ed.* 189 (1948); Hervey, *There's Still Room for Improvement*, 9 *J. Legal Ed.* 149 (1956); Hervey, *What's Wrong With Modern Legal Education?* 6 *Clev.-Mar. L. R.* 381 (1957).

scholarship.⁷ The average student is not interested in erudition. The dollar sign looms largest. His interest is mainly on learning how to win a case. The student who beats a path to the "genius" of the faculty all too frequently does so for the "answers." The demand is for the rule of the herd. These students, as all men, are the product of their society. In our society the quest is not for the satisfaction of learning, but for larger compensation and greater material comforts, to which we have given the name "the high standard of living."

In early history, students demanded effective performance by their teachers, just as they do today of their football coach. In the Middle Ages at Bologna, it is reported that students threatened their professors, or masters, as they were called, with collective boycott. The threat was effective, as the professors lived entirely from the fees of their pupils. The professor had to put up a bond promising to abide by a detailed set of regulations, which served to ensure to his students their coin's worth. A professor could not be absent without permission, not even for a day; and whenever he left town, he was required to make a deposit to secure his return. The professor in no case would be allowed to spend most of the academic year away from his classes, attending conferences and conventions, and then in the late weeks of the year attempt a marathon of make-up classes. The professor had to start with the bell and continue until the next bell. He could not spend the period checking the roll. He was not permitted to skip a chapter or to postpone a difficulty indefinitely, and he was required to cover ground systematically. He could not spend the semester on the introduction and bibliography.⁸

A. Diversity of Program

The primary line of cleavage in legal education is between the theoretical and the practical. On the one hand, there are pleas for "clinical lawyer-schools" or for more "practical" instruction;⁹ while on the other hand, there are pleas for more

⁷ The problem is not confined to the United States. See Eric F. Schweinburg, *Law Training in Continental Europe* (1945). Aptitude tests abound, but the simple device of letting the law school applicant, rather than the interviewer, do the talking, and of having the applicant write for a few hours on any subject, without reference books, has rarely been tried. Law schools have something to learn from Freud.

⁸ See Charles Haskins, *The Rise of Universities* (1923).

⁹ See Frank, *A Plea for Lawyer-Schools*, 56 *Yale L. J.* 1303 (1947); Why Not a Clinical Lawyer-School? 81 *U. Pa. L. R.* 907 (1933); Hervey, *There's Still Room for Improvement*, 9 *J. Legal Ed.* 149 (1956); Landman, *The Purpose of the Law School*, 4 *N. Y. L. For.* 419 (1958). The dichotomy between the theoretical and the practical prevails in other fields too. See e.g., *Goals for Political Science*, Report of the Committee for the Advancement of Teaching, American Political Science Ass'n. (1951).

theoretical schools or for "teaching law in the grand manner,"¹⁰ as is supposedly done abroad.

It is a truism to say that a country should be judged by its own conditions, problems, and objectives.¹¹ The entering American law student, having spent three or four years in undergraduate college and perhaps two or three years in military service, is older than the European law student, and American legal training does not provide a period of apprenticeship as does the European. As a consequence, the argument runs, European legal education can afford to be theoretical, whereas American legal education must be professional.¹²

Men seem always to take polar positions. The truth more often than not is found somewhere in the middle. In the case of legal education, the truth lies, as it has been figuratively put, in "mid-Atlantic."¹³

Variety is the spice of life, and the same is true for legal education. The American law school, it seems, in view of the conditions of its country, can and should satisfy the competing conceptions of the objectives of legal education. It can give the student an understanding of the processes in which the lawyer participates, and it can give him knowledge, and it can sufficiently give him skills.¹⁴ Properly utilized, three years of law school training for the full-time student should be adequate to accomplish these objectives. The introduction of a fourth year in American full-time law schools does not seem desirable in view of the lassitude now found in the third year.¹⁵ A fourth year would result, in effect, in a second third-year in the day law school course. Day law schools do not use effectively the three years now available; and some evening law schools may be guilty of the same defect in their four year courses.

It is well known that the interest of the full-time law student drops steadily in the second and third years. Only the first year is found absorbing—rarely, indeed, does one hear a first-year law

¹⁰ See Holmes, *Collected Legal Papers* 37 (1921); Fuchs, *Legal Education and Public Administration*, 8 *Pub. Adm. R.* 226 (1948); Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 *J. Legal Ed.* 189 (1948); Simpson, *Continuing Legal Education of the Bar*, 59 *Harv. L. R.* 694, 696 (1946).

¹¹ See Friedmann, *Australian Legal Education: Further Observations*, 9 *J. Legal Ed.* 495 (1957). See the symposium on legal education in volume 3 of *J. Soc. P. T. L.* (1955-1956).

¹² See Griswold, *English and American Legal Education*, 10 *J. Legal Ed.* 429 (1958).

¹³ See Comment by Professor O. Kahn-Freund, 3 *J. Soc. P. T. L.* (N. S.) 105 (1955).

¹⁴ The competing conceptions of the objectives of legal education are discussed in Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 *J. Legal Ed.* 189 (1948).

¹⁵ Cf., Morse, *Let's Add Another Year*, 7 *J. Legal Ed.* 252 (1954). Approved college-law programs now in operation are 3-3, 4-3, 2-4, 3-3½ (LSU, Texas), and 3-4 (Minnesota). See Prosser, *The Ten-Year Curriculum*, 6 *J. Legal Ed.* 149 (1953).

student complain that his curriculum is dull.¹⁶ The first year is interesting, primarily, because the case-method is a challenge. By the middle of the second year, the student is tired of reading cases as a method of training. The second and third years should not be a repetition of the same old thing and, therefore, mostly a drudgery.

The course material generally presented in the first year is good,¹⁷ with the possible exception of the course in Agency, which seems superfluous.¹⁸ The course in Criminal Law has certain pedagogical value, but as its problems are relatively easy,¹⁹ the course might advantageously be curtailed. The ordinary-reasonable-man concept in Torts might be developed in less time.²⁰

In the way of a new challenge to the student, and as a change of pace, the second year might be devoted to background courses. In spite of the acknowledged importance of "deepening" courses, they are, for the most part, ignored in the law school curriculum. The argument against their inclusion is well-known: the student should have his liberal and fine arts before coming to the law school, and the law school cannot afford to sacrifice any of its "valuable" time for these purposes. It is, however, a mistake to assume that the entering law student has had training in disciplines relevant to the law.²¹ In fact, it cannot even be assumed that he knows the basic rules of grammar.²² It is true that the American law student is older than the European, but maturity in thought and expression, not in years, is what matters. Moreover, with the best minds being attracted to medicine and (with the appearance of the Soviet sputnik) to nuclear physics,²³ it is doubly important to stress the goals of civilization.

The second-year schedule might include courses in Roman Law,²⁴ international law,²⁵ jurisprudence, political economy, psy-

¹⁶ See Hall, *Teaching Law by Case Method and Lecture*, 3 J. Soc. P. T. L. (N. S.) 99, 103 (1955).

¹⁷ Constitutional Law is a recommended first-year course.

¹⁸ Agency should be replaced by the course in Business Organizations.

¹⁹ The first-year course in Criminal Law generally does not include problems of administration, penology and crime-causation.

²⁰ See the suggestions in Cowan, *Jurisprudence in the Teaching of Torts*, 9 J. Legal Ed. 444 (1957); *Contracts and Torts Should be Merged*, 7 J. Legal Ed. 377 (1955).

²¹ A number of law schools announce recommended pre-law subjects.

²² See Grooves, *Help for the Semiliterate Law Student*, 10 J. Legal Ed. 369 (1958); Kinyon, *English as She Was Wrotten at Minnesota*, 7 J. Legal Ed. 553 (1955); Prosser, *English As She Is Wrote*, 7 J. Legal Ed. 155 (1954). It is significant to note the facility of expression of students who majored in English in undergraduate college as compared to other students.

²³ Law is getting less than its fair share of promising students. More might be done in the way of positive recruitment, both by individual institutions and by the American Bar Association and the Association of American Law Schools.

²⁴ See Franklin, *On the Problem of Teaching Roman Law*, 5 J. Legal Ed. 508 (1953). Tulane is one of the few schools having a course in Roman Law.

²⁵ See Franklin, *Needed: More and Better Courses in International Law*, 4 J. Legal Ed. 326 (1952).

chiatry,²⁶ legal history,²⁷ sociology of law, and comparative constitutional theory.²⁸ It is generally considered that students are not interested in these courses. The interest of the student is an important consideration in the determination of the courses which the law school should offer, but it is by no means the sole criterion. The student's university, and not the student, should have the final say. It is the task of the school to lift the student out of the doldrums. The interest of contemporary youth in "deepening" courses can be kept alive by correlating the materials with the courses studied in the first year and with other contemporary issues. Emphasis should be placed on giving the student information and legal principles that will enable him to acquire a more intelligent comprehension of modern law. The teacher should try to show the student the pleasure that can be found in learning. The teacher will be able to show them this if he too delights in learning, and also delights in stimulating others to delight.²⁹

Legal education in the United States has dealt primarily with the adjudicative process, and has almost totally neglected the legislative process.³⁰ The second year might be used to overcome this deficiency in training. As part of a legal-writing program, students might be required to draft legislative provisions, with comments, and then be required to defend the texts in group sessions. Rather than focus its attention almost exclusively upon preparation for the private practice of law, American legal education should make law-trained administrators, executives, and legislators better prepared to cope with the unprecedented problems of our time.

Educational interest in the third year might be achieved by seminars, correlation courses, and practice courses. A number of law schools are developing seminar courses. As a rule, the seminars concentrate on the study of particular problems raised in regular courses or involve the study of the social and economic background of a selected legal problem. Each member of the faculty might offer a senior seminar, perhaps once each fourth

²⁶ Dr. Andrew S. Watson of the University of Michigan has in preparation a work on psychiatry for lawyers. Along with the psychiatrist, the lawyer is most keenly interested in the psychodynamics of man. See Watson, *The Law and Behavioral Science Project at the University of Pennsylvania: A Psychiatrist on the Law Faculty*, 11 *J. Legal Ed.* 73 (1958).

²⁷ See Bodenheimer, *An Experiment in the Teaching of Legal History*, 2 *J. Legal Ed.* 501 (1950); Kuhn, *The Function of the Comparative Method in Legal History and Philosophy*, 13 *Tul. L. R.* 350 (1939); Murphy, *Legal History as a Course*, 10 *J. Legal Ed.* 79 (1957).

²⁸ The course in Comparative Law is also recommended, but the better method may be to teach all courses comparatively. See Stone, *On the Teaching of Law Comparatively*, 22 *Tul. L. R.* 158 (1947).

²⁹ Williams, *op. cit. supra* note 1 at p. 245.

³⁰ See Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 *J. Legal Ed.* 189, 193 (1948).

semester, in a field of his special interest. Responsibility of each meeting of the seminar can be placed on a student, subject to the faculty member acting as a sort of midwife. In seminar work, as a rule, the student should be required to do a reasonable amount of writing. Emphasis on writing will naturally strengthen the student's ability of self-expression. As in all endeavors, however, variety is the desideratum. Seminar procedure should not become stereotyped. Report writing need not be required in all seminars. A seminar can even be conducted out of a casebook. A seminar should not be a place where a lazy professor can push the burden of preparation onto the student. A student supposedly comes to a university for the ideas and insights of big men, and not to hear some student dully read a paper. In any event, seminar work is valuable because it involves considerable individual investigation by the student, but it should not be over-emphasized to the point of becoming the principal method of law school training.

In correlation courses, the law teacher generally needs the cooperation of an expert in the extralegal field. The cooperative work of Michael and Adler in the fields of evidence and crime is one example of the fruitfulness of this type of approach.³¹ It is believed that the successful use of experts in fields outside the law depends upon the selection of problems for study by the law teacher.³² Suggestions for correlation courses include the pairing of corporation law with corporate financing, labor law with labor economics, taxation with economics of taxation, administrative law with administration, evidence with psychology, trusts with investment banking, criminal procedure or administration with criminology, jurisprudence with philosophy or social theory, trade regulation with the economics of competition and monopoly, procedure with logic, and constitutional law with political theory or advanced constitutional history.³³ Needless to say, courses should not be invented for the purpose of obtaining a foundation grant. The honor system applies to administrators as well as to students.

The American law school is a professional school which apparently must, to a degree, substitute for the apprenticeship programs found in foreign countries.³⁴ The day is approaching, or it may already be here, when a lawyer, as a physician, will be known by his specialty. Notwithstanding this trend, the number of specialty courses taken by the law student need not be many.

³¹ See Jerome Michael and Mortimer Adler, *Crime, Law and Social Sciences* (1933). There is no merit to departmental isolation. See Trueblood, *The Idea of a College* (1959).

³² See Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 *J. Legal Ed.* 189, 202 (1948).

³³ See Hall, *A 2-2-2 Plan for College-Law Education*, 56 *Harv. L. R.* 245, 260 (1942).

³⁴ See Simpson, *Continuing Legal Education of the Bar*, 59 *Harv. L. R.* 694, 698 (1946).

A firm does not hire a graduate for his specialty. In one sense of the word, it is broad-minded to be narrow-minded. While in school, there is no point in becoming involved in the nooks and crannies of several specialties. A university graduate should be graduated into a civilization rather than into a trade.

Specialty training, if the law school must furnish it, can be accomplished in great part by graduate and continuing legal education programs.³⁵ There are advantages in scheduling a part of specialty training after the student has had some experience in practice.³⁶ Specialization should come after one's interests have developed. The various types of continuing legal education programs, which increasingly are being offered to lawyers by law schools and bar associations throughout the country, may be the answer to the search for time in law school for background courses.

A saving in time in law school can also be achieved by a revision in the content of certain courses. To illustrate: Matters of minutiae can be omitted from procedure courses. The technical rules can be looked up in practice books or more easily learned from the clerk of court. Attention should be directed to the historical development and fluctuations of procedural issues.³⁷ Criminal procedure might be taken up in the course in evidence,³⁸ or it might be combined with the civil procedure course or taught with substantive criminal law. The course in Domestic Relations is exceptionally simple, of the sort that the student could readily assimilate himself, but if retained in the curriculum, it might include anthropological, psychological, and sociological materials on family life. Students display unusual interest in the course on Creditors' Rights, probably because of the practical importance attached to the subject. As in other areas, there is a tendency at some schools to slice the field of creditors' rights into numerous pigeon-holes. It is true that the law cannot be learned in one gulp and must be divided into portions, but the division should be kept to a minimum.

The bar examination may impede reform in the law school curriculum. The criterion of a good law school is generally taken by the student to be success on the bar examination. The average student, being of a utilitarian mind, is interested in courses "required" by the bar examination. Efforts have been made during the last three decades to improve the bar examination. The Section of Legal Education of the American Bar Association, the

³⁵ See *infra* discussion.

³⁶ See Niles, A Graduate Program for Lawyers, 1 J. Legal Ed. 590 (1949).

³⁷ See Huber, Eduardo J. Couture: In Memoriam, 31 Tul. L. R. 321 (1957); Couture, The Nature of the Judicial Process, 25 Tul. L. R. 1 (1950).

³⁸ "The rules of evidence, in all their full glory, constitute a body of law that takes at the least a volume and at the most several volumes to state fully and accurately. However they can be epitomized by a relatively few principles." Loevinger, Facts, Evidence and Legal Proof, 9 West. Res. L. R. 154, 161 (1958).

National Conference of Bar Examiners, and the Association of American Law Schools recently have approved a recommended code for bar examinations. At any rate, the student can prepare for the bar examination in bar admission courses. In a few weeks of intensive work in a "cram school," the law graduate can be given enough material to make a creditable score.

The test of a good legal education is not what the graduate does in the first or second year out of school, when he is confronted with problems for which no school can prepare him, but rather in what he does thereafter. It is not in the scheme of things for a law school to turn out an experienced lawyer.³⁹

B. Extracurricular Scholastic Activities

In spite of all the criticism, the American law school is, nonetheless, generally recognized to have more dynamism and vitality than its foreign counterpart.⁴⁰ One reason is the motivation of the American student. By and large, he faces a brighter future than does the foreign law student. There are other reasons—namely, competitive activities and close faculty-student relations found in the American law school. These matters are not mere dross. There is value in them. Law school training is perhaps the only part of the entire American educational system which is held in high regard by foreign observers.

Among the good things on the American scene are activities which promote scholastic competitiveness among the students, such as the law review and moot court. The point has frequently been made that the law review should become the law school.⁴¹ As things stand, the number of students on law review is a small fraction of the student body. Competitors for election to the board are generally chosen from those having the highest grades, usually in the upper ten per cent, and as the review must be adequately manned, all or most of the competitors are elected. Examination grades perhaps should not be the sole criterion for election to the board. The examination grade might be lowered, and election to the board made dependent upon the student's research and writing ability.⁴² Under current practice, a score of men capable of doing law-review work are not on the review. It may prove

³⁹ Yntema, Foreword to Lawson, *A Common Lawyer Looks at the Civil Law* xi (1953).

⁴⁰ Edlund, *Contemporary English Legal Education*, 10 J. Legal Ed. 11 (1957).

⁴¹ See Hawkland, *Extra-curricular Teaching Methods*, 20 Tenn. L. R. (1949); Westwood, *Law Review Should Become the Law School*, 31 Va. L. R. 913 (1945). Law review writing has been frequently criticized because it trains "to a rigid formula designed to produce the maximum of data in the minimum of space without a modicum of readability." Gower, *Legal Training in the U. S. A.*, 3 J. Soc. P. L. T. (N. S.) 153, 158 n. 3 (1956).

⁴² See Lee, *Administration of the Law Review*, 9 J. Legal Ed. 223 (1956). This is the practice at Cleveland-Marshall Law School, where it has been dramatically successful since its inauguration in 1956.

fruitful to increase the number of men who may compete for a place on the review.

In many schools law review training is being imitated for the non-law-review student in so-called "Legal Research and Writing" programs.⁴³ Publication of the better papers, even in mimeographed form, would serve as an impetus to the student.

Moot court competition is an important factor in the educational process of the school. It should be required of every first-year student. Students should be urged to continue moot court in the second and third years. Roundrobin competition would offer opportunity for more participation than the eliminative competition, which is now the general procedure. To encourage students to participate, the members of the team with the best record at the end of the senior year might be rewarded by engraving their names on a plaque prominently displayed in the law school building. The two teams which finish the roundrobin competition with the best record might argue a final round before the highest court of the state, which is generally receptive to an invitation to hear the argument. Moot court should be administered by a board of student advisers, but the faculty should cooperate with the board in improving cases for argument.

Legal-aid work has been developed as a senior-year stimulant at a number of schools. It is said that legal-aid work gives experience in the problems of practice, that it gives a feeling of "reality" to the student's work, and that the contact with the problems of the poor and underprivileged is a potent means of education in the social responsibility of the legal profession.⁴⁴ From most reports, however, it seems that student legal-aid work is of little scholarly or practical value, except that it is a gimmick for the catalogue. Legal-aid work destroys the presumption that students should devote their time to studies in preparation for their classes. It justifies part-time legal education in the day school. A student may as well work in a law office and get paid for his services or make a contact for full-time employment upon graduation. Legal-aid work is time-consuming, particularly so when the office is not located conveniently near the law school.

⁴³ E.g., at Tulane. One school reports that examination papers are employed as the principal criterion to determine which students shall be required to take Legal Writing, which is taught by a specialist in remedial writing from the English Department. See Spies, *Examination Review, Dismissal, and Readmission: Some Specific Practices*, 9 J. Legal Ed. 473, 478 n. 8 (1957). On Legal Research and Writing programs, see Horowitz, *Legal Research and Writing at the University of Southern California—A Three Year Program*, 4 J. Legal Ed. 95 (1951); James, *Legal Writing at Stetson*, 7 J. Legal Ed. 413 (1955); Kepner, *The Rutgers Legal Method Program*, 5 J. Legal Ed. 99 (1952); Mandelker, *Legal Writing and Writing: The Drake University Program*, 3 J. Legal Ed. 583 (1950); Shestack, *Legal Research and Writing: The Northwestern University Program*, 3 J. Legal Ed. 126 (1950); and see n. 42 above.

⁴⁴ See Confidential Report of the Committee on Curriculum, Harvard Law School 100 (1936); Piel, *The Student Viewpoint Toward Clinic Work*, 8 Am. L. S. R. 228, 239 (1935).

Strange as it may seem, there are only 168 hours in the week. If the students have a surplus of time and energy, it should be tapped for more scholarly activities.⁴⁵ Legal-aid work is not the responsibility of the law student.

C. Faculty-Student Relations

The fundamental organization of the early universities was an association of masters and scholars leading the common life of learning. The common life of teacher and student is more likely to be found today in America than on the Continent. The close faculty-student relationship generally found in American education is one of its noble qualities. It is the envy of the foreigner.⁴⁶ There is talk, however, in some American quarters, that a personal faculty-student relationship is antithetic to the philosophy of individualism and self-development. This argument is by no means lightly to be dismissed, but it seems misleading to apply the label "paternalism" to a relationship simply because it is intimate. A teacher is not a "baby-sitter" or a police commissioner because he concerns himself with the whole life of his students.

American institutions of learning tend to avoid institutional formalities. France, on the other hand, to take one example, is one of the most institutionalized of countries, where there is complete detachment between teacher and student. A French professor is always addressed, "Monsieur le Professeur." While lecturing, he wears a solemn black and red robe and sometimes a hat. When he enters the classroom, the students rise from their seats and applaud, and when the professor completes his lecture,⁴⁷ the students again applaud. This is in marked contrast to the American teacher, who may take off his coat, roll up his sleeves, and put a stick of chewing-gum in his mouth. No porter ushers the American teacher to his classroom, and the audience is not required to rise upon his entrance or to applaud. The American teacher probably feels that the best applause is a sharp round of questions. The French teacher rarely exchanges a word with

⁴⁵ "Many law school deans have told me that there is little that they can do about the working student. I do not agree. If a full-time school would make its program so difficult that only those students who devote full time to their studies could hope to pass, the problem would certainly be lessened." Hervey, *There's Still Room for Improvement*, 9 J. Legal Ed. 149, 161 (1956).

⁴⁶ "The American law student enjoys, in and out of class, real contact with his professors which his Continental fellow completely lacks. Such contact creates stimulation; it results in orientation for teacher and student as to the latter's progress, and in satisfaction for both. The American student can thereby always remain assured that he is the center of the institution that surrounds him, and the primary object of his teacher's interest. The Continental law student, on the other hand, can scarcely avoid feeling that he is an outsider to the truly vital sphere of his university and almost a nuisance to his professors." Eric F. Schweinburg, *Law Training in Continental Europe* 22-23 (New York: Russell Sage Foundation, 1945).

⁴⁷ Mimeographed copies of the lecture, called "polycopie," are usually on sale at the bookstore.

the student until they meet at the final oral examination.⁴⁸ The word university implies unity, but the French university is not a place of a real sharing of life.

The American student, happily, thinks of teaching as a personal association, rather than as a public ceremony. But the American student, sorry to say, is not terribly interested in serious problems. Unlike the French student, who strikes over the economic and political issues of the day, the American student strikes over the panties of a girl starving for love in some campus cloister.

The responsibility of a teacher goes beyond the classroom and beyond publication. The primary purpose of writing is to communicate, but it is sometimes forgotten, particularly by the "research man," that communication may be oral as well as written. The printing press has not done away entirely with the usefulness of oral communication. As Longfellow put it, a single conversation across the table with a wise man is better than ten years' study of books.⁴⁹

Perhaps by osmosis, if in no other way, close faculty-student relations will give rise to an atmosphere of learning. Success in education, particularly in America, depends upon the interest which the faculty member shows in the academic and personal problems of his students. Participation in the professional and social activities of the students is one way to achieve a close and personal atmosphere.

A program of colloquia merits consideration. In the colloquium program, it is suggested that each faculty member meet with a group of approximately ten to fifteen students for an hour or two either biweekly or triweekly. Any topic relevant to legal training should be legitimate for discussion. Sessions might be devoted to the review of great books. It is the task of the faculty member to keep the meeting on a serious level; the sessions should be casual but not superficial. It would be good practice to vary the participants for each session.

D. Examination Review

Faculty members should be willing to review examination papers with students, whether passing or failing. The fear that

⁴⁸ See Deak, *French Legal Education and Some Reflections on Legal Education in the United States*, [1939] Wis. L. R. 48.

⁴⁹ Talk is a great developer. "A person grows fastest and best, and attains most balance and proportion, when by talk he sharpens his wits in contact with other persons." See J. George Frederick, *How to Be a Convincing Talker* 5 (1937). "There are men who have never published anything and yet are tremendous assets because of the way in which they give themselves without stint to their students. This kind of excellence is not something which can be measured mechanically, but it is reasonably obvious to anyone who will take the trouble to try to observe it. Note which teachers the former students seek out upon their return; note which teachers inspire their students to do scholarly work; note whose help is sought in human crises." Trueblood, *The Idea of a College* 48 (1959).

the faculty member will be deluged is not realistic. An optional class session might be held following the examination to discuss the essential elements of acceptable answers. The best examination papers might be placed in the library. A spirit of emulation and of criticism will be aroused in the student. There is no point in making a mystique out of the examination process. The law teacher should model the courage of the judge in exposing decisions. The faculty member, as a result, will be more careful in grading. It is no secret that students suspect that some professors, eager to get away on vacation or to other matters, are apathetic or arbitrary in grading. The effect on the educational process is obviously detrimental. It is not too long before students approach examinations with indifference.⁵⁰

E. Repetition of Courses

Students are required in some schools to remove failing grades by repeating the course. Repetition of a second or third-year course to remove a failure does not particularly benefit the student,⁵¹ except that on the second time around the student will know when to laugh at the teacher's jokes. Frequently, the imposition results in the student simply waiting around another year to repeat the course. Boredom is contagious. A number of schools require only that the student make up the credit lost by reason of his failure in some other course.⁵² As one teacher put it, "Repetition is usually associated with conditioning rather than education, and one would hardly be surprised to find Pavlov's dogs responding to the cry of 'Res ipsa loquitur!' if it were repeated often enough."⁵³

F. Deportment of Students

A word or two might be said in passing about the deportment of students. The law school is a school for men. Coat and tie and long pants lend dignity to the classroom, as they do to the office and to the courtroom. This form of "character education" may seem petty and vain, but it helps develop an educational atmosphere rather than a picnic. Students who attend prep schools and undergraduate colleges which require coat and tie are surprised to learn that they can take them off when they arrive in the professional school of law.

Standing while speaking is important. The arrangement of chairs and desks in many law schools does not provide sufficient space for the student to stand when called upon, but where it is

⁵⁰ To avoid prejudice in the grading of examination papers, the anonymous system is recommended.

⁵¹ Invariably the student passes on the second time, too often because the teacher has tired of him.

⁵² Spies, *Examination Review, Dismissal, and Readmission: Some Specific Practices*, 9 J. Legal Ed. 475, 479 (1957).

⁵³ Spies, *op. cit. supra* note 52 at p. 487.

possible, it should be required. It helps develop the student as a speaker. Among other things, standing when reciting pulls the student away from his written brief and demands more thorough preparation on his part. In seminars, it is essential that the professor and students sit around a table. It is difficult to conduct a discussion among people who are seated in straight rows, audience style.

G. Interchange of Students

The school should support and encourage the interchange of students with other countries.⁵⁴ The presence of foreign students will inculcate in the American student an interest in the laws, traditions, and hopes of other peoples. An interchange program will create a hospitality in students to new ideas.

III

The Faculty

There is conspicuous agreement in the current debate concerning education on the supreme importance of a good faculty. It is not possible to envisage a good school with poor teachers. The "what" and the "how" of teaching matters far less than who does the teaching. To a student who asked what he taught, so that he might choose his courses, Whitehead is supposed to have replied, "I teach three courses, Whitehead I, Whitehead II, and Whitehead III."

A. Salaries

The teacher no longer lives in a monastery. He now has a family. He now has or wants a car, and he wants other things. For them, he wants an adequate salary. Unfortunately, he must adjust to the hard fact that the university cannot compete with industry in wages paid. It seems that he must remain a symbol of sacrifice to "higher ideals." The teacher must learn to work hard with little financial recompense.

The faculty members of the law school are in the happy position of being better remunerated than members of other faculties; as a rule, the law school salary scale is not patterned after the university scale. One of the requirements for recognition as an approved law school is that faculty members shall be "well paid."⁵⁵

⁵⁴ See Espinosa, *International Interchange of Law Teachers and Students under the United States Government's Educational Exchange Program*, 9 J. Legal Ed. 66 (1956); Franklin, *On the Teaching of Advanced Foreign Civilians in American Law Schools*, 2 J. Legal Ed. 455 (1950).

The Association of American Law Schools stands for the principle of "Equality of opportunity in legal education without discrimination or segregation on the ground of race or color." Art. 6, § 6-1 (1-2). See Leflar, *Legal Education: Desegregation in Law Schools*, 43 A. B. A. J. 145 (1957); Van Hecke, *Racial Desegregation in the Law Schools*, 9 J. Legal Ed. 283 (1957).

⁵⁵ See Harno, *Legal Education in the United States* (1953); Crotty, *Law School Salaries—A Threat to Legal Education*, 6 J. Legal Ed. 166 (1953).

B. Method of Teaching

It is often said that much of the dullness of the foreign law school could be eliminated by interjecting some Socratic discussion.⁵⁶ In Continental law schools, there is little or no dialogue between the student and teacher. The pattern is the same: authoritative teaching, which substantially amounts to dictation, in large classes, sometimes requiring the use of a microphone.⁵⁷

The diversity of jurisdictions in the United States, affording a type of built-in comparative law, is said to make possible Socratic teaching in America.⁵⁸ It seems, however, that the method of teaching can be the same in a unitary or a federal system. A course in Kant, to make a comparison, can be taught by the lecture or Socratic method.

There is much debate and little consensus as to the most desirable method of instruction. Concern over the method seems exaggerated. A good teacher will teach in his own way. The creative teacher has always been something of an individualist and probably will continue to be.⁵⁹ A good teacher is a person with a message and a sense of communication. More emphasis ought to be placed on what is said and not so much on how it is said.⁶⁰ As Professor Addison Mueller put it, "If a man has ideas to give to his students and if he has enough conviction in the soundness of his ideas to present them with enthusiasm, the law schools do not have to fret about whether he teaches by the Socratic, the semi-Socratic, the neo-Socratic, or the pseudo-Socratic method; whether he uses the discussion or the lecture system; whether he wheedles, or terrorizes or confuses or clarifies; whether he works with the case method, the problem method, or neither or both. If he has ideas to present and if he presents them seriously, good students will beat a path to his classroom."⁶¹ The great and inspired teacher does not have to be very much concerned with attention to method. For the rest, attention to the "how" of teaching might make the classroom a more vital

⁵⁶ See Edlund, *Contemporary English Legal Education*, 10 *J. Legal Ed.* 11 (1957).

⁵⁷ Legal education in England varies in many respects from that upon the Continent. In England students rarely attend lectures, but their serious work is in tutorials. Individual work is done with a tutor, which consists essentially of preparing an essay weekly, which is read and discussed with the tutor during a one-hour period per week. Approximately eight essays in each subject are written and discussed. See Jenks, *English Legal Education*, 51 *L. Q. R.* 162 (1935); Newton, *The English System of Legal Education*, 1938 *Wis. L. R.* 547.

⁵⁸ See Griswold, *English and American Legal Education*, 10 *J. Legal Ed.* 429, 433 (1958).

⁵⁹ See Gilbert Highet, *The Art of Teaching* (1950). See, for an example of unique method, Oleck, *The "Adversary Method" of Law Teaching*, 5 *J. Legal Ed.* 104 (1952).

⁶⁰ "When Socrates discussed problems with the young intellectuals of Athens, it is rather clear that he contributed 95 per cent or more of the participating ideas and solutions." Hall, *Teaching Law by Case Method and Lecture*, 3 *J. Soc. P. T. L.* 99 (1955).

⁶¹ Mueller, *There is Madness in Our Methods*, 3 *J. Legal Ed.* 93 (1950).

experience. It may be the case, as some say, that only a good teacher can successfully handle the Socratic method.⁶²

C. Size of Class

The trend in American education is towards the expensive operation of small classes and seminars. Small classes and seminars are commendable. In them, a student can be treated as an individual instead of as an element in a system. There are, however, advantages in large classes. A large class serves as an inspiration to most teachers. A large class, to a degree, puts the student on his own and develops self-reliance. Moreover, the theory that the student develops in proportion to the amount of time his professor can give him individually is not always correct. It all depends on the professor.⁶³ It is best to have the fewest possible students exposed to a poor teacher. On the other hand, a good teacher should touch the lives of as many students as possible. Thus, unless the university obtains good teachers, its expensive policy of bestowing benefits with one hand ends in its removing the benefits with the other hand.⁶⁴ A large class with an able teacher is preferable to a small class with a poor teacher.⁶⁵

D. Faculty Seminars

A seminar for faculty members should have value in establishing an atmosphere of learning. The chief source of stimulation of the human mind is other minds. At one-hour weekly or biweekly meetings, perhaps at a luncheon meeting, each member of the faculty might present a paper in a field of his special interest. This program should promote scholarship. It will advise faculty members on significant developments in law outside of

⁶² See Yntema, Foreword to Lawson, *A Common Lawyer Looks at the Civil Law* xii (1953).

⁶³ Some teachers consider that the Socratic method works better with a large class. To place a legal Socrates in a large room of victims might seem like a travesty on Socratic dialogue, but the victim of the moment suffers vicariously for the others, who perceive his errors and conclusions better than he can. See, Oleck, The "Adversary Method" of Law Teaching, 5 J. Legal Ed. 104 (1952).

⁶⁴ See Williams, *op. cit.* supra note 1 at pp. 120-121.

⁶⁵ Beardsley Ruml, former Dean of Social Sciences at the University of Chicago, proposes in his Memo to a College Trustee (1959): Abandon the superstition that a law student-to-teacher ratio is a measure of college quality. Raise it from the "ideal" ten or so students per teacher to about twenty. Install a few big lecture courses, attended by as many as 300 students, which would give teachers more time to devote to small seminars. At the same time reduce the teacher's classroom hours to nine a week, allowing him more time not only for tutorial instruction but also for research in his specialty. See *Life*, May 29, 1959, p. 24. The Talmud's panacea is a 1-to-25 teacher-student ratio.

their own spheres of interest. It should also give senior members an opportunity to evaluate young members of the faculty.⁶⁶ As a general proposition, it is also a good idea to attend each other's lectures. Thought may be developed in solitude, but, generally speaking, it is not aroused except in community.

E. The Teacher as an Administrator

Today, with increased activities, and with involved administration, the tendency in the American law school is to make every teacher an administrator. It is said to be a "can't help it" situation. It is defended in some places on the theory that divorcement of administration and teaching, and the resulting antagonism, is avoided, and also decentralization of the administrative work reduces the burden upon the dean's office. Be that as it may, good teachers are being taken away from the classroom and other scholastic activities for clerical work. Administrative tasks make drones out of teachers. There is a good deal of truth in the statement that an ideal faculty is one which revolts against committee meetings. All too often, administrative work performed by teachers can be done by chore boys with ordinary intelligence.

F. Exchange of Teachers

A school profits from teacher interchange with other schools. A sabbatical rotational plan merits consideration; and so does a plan for exchanges with foreign schools. Teaching and student life would take on a new vitality if teachers were *required* to take at least a sabbatical semester for visiting other institutions not less infrequently than the Biblical prescription of once in seven years.⁶⁷

⁶⁶ Faculty hiring varies from institution to institution, but as a rule, the dean does the hiring with the consent, real or unreal, of the faculty. When it is time to vote on tenure, the faculty discovers for the first time that it knows little more about the man than when he first joined the faculty, except as to how he dresses and how he gets along with the others. The young teacher knows that he must court his superiors, but he should be made to feel that scholarship also has something to do with tenure. A clear and positive policy as to tenure as well as to salary is important to faculty morale. See Prosser, *Advice to the Lovelorn*, 3 J. Legal Ed. 505 (1951); Elliott, *Love to the Advice-Lorn*, 4 J. Legal Ed. 101 (1951). C. P. Snow's well-known novel *The Masters* (1951) is a subtle study of the nature of politics and power through a fascinating account of the election of a Master at a Cambridge University college.

⁶⁷ See Klapper, *Problems in College Teaching*, in Theodore C. Blegan and Russell M. Cooper, *The Preparation of College Teachers* 40 (1950); Dainow, *Exchange Opportunities for American and Foreign Law Teachers*, 9 J. Legal Ed. 57 (1956). The greatest profit to be derived from a foreign teacher is when he teaches his specialty in his own way, without trying to mimic the manner of his hosts.

IV

The Alumni

Today, to an ever-increasing extent, law schools are educating the practicing lawyer.⁶⁸ Programs of continuing legal education offer opportunity to the law school graduate to learn the fundamentals of a specialized field or to keep abreast of rapidly changing fields of law. One advantage of the program is that practical work courses now taken by the law student can be postponed until after graduation. Special courses have proliferated through the curriculum in a way which fattens the catalogue but does little else for the law student. The program of continuing legal education furnishes an excuse to cut sharply the number of skill courses offered to the law student.

A national conference on continuing education of the bar, under the joint sponsorship of the American Bar Association and the American Law Institute, met in New York in December 1958. It was there agreed that the organized bar must carry the basic responsibility for making the program a reality, but, in addition, law schools and specialized training agencies for lawyers were said to have important roles to play.

It is estimated that presently only eighteen state bar associations offer courses for practicing lawyers, and, of these, thirteen present their instruction at the annual association conventions. Attendance at these courses has been generally disappointing.⁶⁹ In the presentation of specialty courses, as a rule, unless the topic be trial tactics or taxation, it seems that the meetings cannot be scheduled on a day of a fiesta, rodeo, opening of fishing or hunting season, football game, or on holidays or work days, and the entire program cannot be over ten hours, and it must be heavily publicized. Up to now, the bar associations have, for the most part, left the responsibility for organizing and conducting post-admission education to the law schools, or upon a service agency such as the American Law Institute's Committee on Continuing Legal Education.⁷⁰ It appears likely that continuing legal education, if it is to succeed, will have to be carried on by the law schools.

School teachers may object, and not without reason, to a program which is designed simply to help the lawyer earn more "bread and butter." A number of persons at the national con-

⁶⁸ See Emerson, *Postadmission Education for Lawyers at Medium-Sized and Smaller Law Schools*, 9 J. Legal Ed. 372 (1956). It is significant to point out that the alumnus is an integral part of higher education in America. Dr. A. Whitney Griswold of Yale expressed the view that the modern day alumnus has been cast in the role of a "patron of the arts" and is called on today to do for the arts and higher education what was once done solely by the church, the state and the nobility. See *New York Times*, June 28, 1959, sec. 4, p. 7, c. 2.

⁶⁹ Talk of Felix F. Stumpf, Administrator, Continuing Education of the Bar, California, on October 4, 1958 in Portland, Maine.

⁷⁰ *Ibid.*

ference meeting in New York protested at the emphasis on vocational training and cram courses.⁷¹ As a result, it was recognized that "education for lawyers after they enter practice must stress their broad professional responsibilities as well as the narrower aim of increasing their competence."⁷²

The young lawyer no doubt needs to listen to expert practitioners for vocational and skill training rather than to a law professor, who may have little awareness of the practical problems of the bar.⁷³ There is, however, more to continuing legal education than keeping up with the practical aspects of the law.

The law school furnishes a service to the legal profession and to the community generally by presenting, among other things, inter-disciplinary programs. It is significant to note that the Tulane School of Law recently presented short institutes on "Law and Psychiatry" and "Law and Morals in the 20th Century," and both of the programs were oversubscribed.⁷⁴ An audience of twenty persons at the most was expected to attend; over two hundred persons appeared. The attendance at these lectures is evidence that there are men in our society who are interested in cultural meetings. Series of lectures on great books, great judges, and great decisions can be stimulating to the community. Too often, the layman regards lawyers as mere negotiators in sharp practices.⁷⁵ The law school has responsibility for inculcating in both lawyer and layman the high ideals of the law.⁷⁶

V

Conclusion

Our conclusion is brief, and it is this: The law school should strive to educate the lawyer and nonlawyer not only on law but also on society. In this enterprise, there will be no boredom. Law, viewed as an interplay of history, logic, and sociology, is second to none as an exciting and liberal subject.

⁷¹ See Arden House Conference on Continuing Legal Education, 45 A. B. A. J. 134 (1959).

⁷² Ibid at p. 142.

⁷³ See Simpson, Continuing Legal Education of the Bar, 59 Harv. L. R. 694, 704 (1946).

⁷⁴ A number of the papers appear in the Tulane Law Review. See 31 Tul. L. R. 465-516 (1957). By and large, law schools have to teach the same thing. But in continuing legal education programs, special interests can be served. Many of the activities of post-graduate programs are group activities. They are a bit more extrovertish than the work of the traditional law school. Team research is possible. A 1959 series of Seminars for Municipal Court Judges, at Cleveland-Marshall Law School, attracted many practicing lawyers as well as judges.

⁷⁵ See John C. Bennett, Outlaws in Swivel Chairs (New York: Comet, 1959).

⁷⁶ See Harno, Legal Education—What Does the Concept Imply? 4 Student Lawyer 9 (1959).

The concept of a university is an association of scholars. That cannot be overlooked in all the multifarious activities imposed upon it, one way or another. Vastly wider attention must be given to the liberal arts and sciences, inasmuch as the applied sciences and allied vocations capture too easily the attention of the public. The purpose of a fine university is to further the acquisition, transmission and increase of knowledge. For that purpose, every university action and endeavor must exist. All else is expendable. The university should seek to create, foster and maintain a climate in which the teacher and student may find the freedom, the purpose, the inspiration, the incentive and the atmosphere to grow and do their work and to make it useful and significant. The criterion of the efficiency or inefficiency of education is not the number of students instructed per faculty member, as Mr. Beardsley Ruml seems to say in his recent book *Memo to a College Trustee*. As President Rufus C. Harris of Tulane University said near his retirement, "What counts chiefly is the number of students in whom a significant, and fortunate change occurs as a result of education. The efficiency of the university depends not upon the number of its graduates but upon the quality of their education."