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## Current Issues in Legal Education

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### Recommended Citation

Richard B. Amandes, Current Issues in Legal Education, 9 Clev.-Marshall L. Rev. 582 (1960)

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## Current Issues in Legal Education

Cover Page Footnote

## Current Issues in Legal Education

(A Survey)

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[EDITOR'S NOTE: Six current issues in legal education, of wide general interest and importance, were posed by the Editors of this review to leading legal educators.

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 distinguished legal educators are believed to be interesting and significant. Each is a personal rather than 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 outstanding American "opinion makers" to difficult problems of legal education.]

### I. Part-Time Day Law Students

*The Problem:* Both day and evening law schools are troubled by the problem of "the working student." In some full-time law schools perhaps half of the students are gainfully employed today, while in many schools enough students are so employed to affect school work.

QUESTION: What should the law schools do about "working students"?

ANSWERS:

*Dean Amandes:* Ideally, sufficient scholarship assistance should be available to allow all students to devote full time to their law studies. Practically, part-time programs are necessary, but students in such programs should be required to meet the same standards as full-time students.

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*Dean Blakely:* The part-time division of a law school may properly permit students to work full time, this division maintaining high standards by limiting the number of hours of law that the student studies each week. The full time division of a law school may properly permit a student to work a very limited number of hours. The full time law student cannot devote all his waking hours to law study. A very limited part time job can actually constitute a recreational diversion.

*Dean Covington:* Limit the number of credit hours of students. No reduction under 15 hrs. per week. Some reduction for over 20 hrs. Dean's discretion 15-20 hrs. per week. Allow dean to make exceptions for students who make better grades and for work which permits study on the job.

*Dean Forrester:* Law professors should strive to convince the students that they should devote all of their time and energy to the study of law during the brief period of formal legal education. This systematic training cannot be duplicated after graduation. If students are compelled to work for financial reasons they should try to obtain jobs which are related to law and legal education. It should also be suggested to students that they borrow funds, rather than engage in part-time work, so that their education will be more sound.

*Prof. James:* I think a law school should do what it can to enable promising students without funds to attend law school. On the other hand many students can do outside work (as I did) without it interfering with their legal education. Where that is feasible I think a student should in this way carry a reasonable amount of his load.

*Prof. Kadish:* A most serious problem. Classes should be distributed throughout the day and a reduced load required where outside work exceeds certain number of hours.

*Dean Maxwell:* There is no question in our minds that the best legal education is accomplished in a full time situation. We now require that a full load of required courses be taken during both the first and second years of Law School. We are working as rapidly as possible to make adequate loan funds available so that so far as possible, able students can have a full time legal education experience.

*Dean Riehm:* We make a determined effort to discourage employment in excess of fifteen hours per week by students enrolled in our Day Division. This is done by written advice, oral comment and scheduling of required classes from 8 a.m. through as late as 4 p.m.

*Dean Sneed:* Law schools must recognize that working students are with us and that they will be with us for the foreseeable future. Therefore, we must do all we can to assure that going to law school is the prime objective of the student and that his work is strictly secondary. We can accomplish this by

scheduling classes six days a week and in the afternoons. I do not intend to make things difficult for working students, but we do them a disservice if we permit outside work to become more important than legal studies.

*Dean Wallace:* I believe that evening law schools are justified in requiring students to report each semester how many hours they work a week in an outside job. I believe further that the school would then be justified in fixing a maximum number of hours which might be carried. I believe that the day schools should discourage outside work beyond 18 or 20 hours a week. However, I doubt the advisability of making hard and fast rules because so much depends upon the efficiency of the individual student in planning the use of his time.

## II. "Theoretical" vs. "Practical" Training?

*The Problem:* Sharp differences of opinion exist as to whether law school training should be primarily "theoretical" or "practical" in emphasis. The question is: Should professional training aim mainly at analysis, theoretical understanding, content knowledge, practical "know how," or workmanship—i.e., all being desirable, which is (or, are) paramount?

**QUESTION:** Which aspect (theoretical, or, practical) should dominate?

**ANSWERS:**

*Dean Amandes:* A single answer cannot be given. In the first year, analysis is very important and practical "know how" would be lost on most students. In the third year when the students have become more concerned with where and how they will practice, more of the latter is desirable. The content of the course and the skills of the instructor are also important. Virtually all faculties include some former practitioners as well as individuals who have taught all their professional lives. Each group has something to contribute to a well rounded legal education. Ultimately, there is nothing more practical than a good theory.

*Dean Blakely:* Law school training must be primarily theoretical. The law school can never turn out a completely polished lawyer; i.e., the gap between law school and the practice of law can never be completely bridged. A few steps in bridging that gap can be taken in law school in courses in Office Practice, Moot Court, Court Observation and the like. The primary objective in training in theory must not be sacrificed, however.

*Dean Covington:* Theoretical should dominate but some attention should be given to practical.

*Dean Forrester:* Sound theory and analysis should dominate. The lawyer has a lifetime of practical experience ahead of him. Only in law school can he hope to have a systematic and thorough training in the basic theory of the law and in exploratory and

imaginative approach to the whole substance of the profession. In this process he must also learn the content of the law in a systematic manner. After graduation he is likely to specialize in the content of the law work supplied by his principal clients. But the general survey of the law gained in law school constitutes a reservoir of specific information which always will be useful and essential.

*Prof. James:* I believe the question involves assumption of a fallacy. I believe that law school training should aim mainly at what the framer of the question regards as "theoretical"—understanding of legal reasoning and analysis; ability to deal at once accurately and imaginatively with legal concepts; understanding of the relationship between legal concepts and the social problem (human, economic, etc.) with which they are concerned. But I also believe that this is the most practical training for a lawyer in the long run. I was director of O. P. A. Litigation Division during war and found those broadly and "Theoretically" trained far better able to cope with the Agency's intensely practical legal problems than those whose legal training stressed the "practical."

*Prof. Kadish:* Adequate legal education requires training in all. The question is hard to answer because it's the wrong question. There is no sharp line between the theoretical and the practical. The meaningful line is that which separates the constructive and valuable from the superfluous and useless. But this line can't be drawn apart from particular, concrete choices.

*Dean Maxwell:* To attempt to train law students how to do particular legal tasks in particular contexts presupposes (1) that you have time in addition to make them legally educated individuals and (2) that you are quite sure which of the myriad legal tasks you should concentrate on. In my opinion these assumptions are not true.

*Dean Riehm:* Without doubt theoretical should dominate. The Law School period is the only time in the student's life he will have an opportunity to build the necessary theoretical foundations. This does not mean that he should not be taught how the theoretical relates directly to day to day practice and a determined effort should be made to do this. However, that is entirely different from wasting one's time on the menial task of learning how to find one's way around the courthouse.

*Dean Sneed:* During the law school time the theoretical studies are far more important than the practical. The so called "practical" aspects of legal study can be picked up quickly by one well rounded in the theory of the law. In truth, every minute spent with the theoretical is intensely practical because the student must know how to analyze, research, and recognize the policy background, in order to perform a practical and beneficial job for his client.

*Dean Wallace:* I do not believe that the law schools should be held to an absolute choice of one or the other. However, I believe that the law school program should be largely "theoretical." However, this does not prevent the giving of problems which call for drafting skills but at the same time require the making of value judgments.

### III. "Part-Time" Professors?

*The Problem:* Many full-time law teachers, for monetary and other reasons, are heavily engaged in counsel or briefing work, writing, politics and government, law practice, or even business company employment.

QUESTION: What, if any, "outside work" is proper for a full-time law teacher?

ANSWERS:

*Dean Amandes:* To the extent that "outside work" does not interfere with a teacher's duties to his students and his school, it should be encouraged. This is particularly true for those teachers who have never practiced law. Further, if the work is related to his courses, it cannot help but enrich his teaching of them.

*Dean Blakely:* Full time law teachers may enrich their own teaching and enhance the prestige of the law school by doing some consulting work in the area in which the teacher is an expert. Such consulting, of course, should be through another attorney and not directly with clients. The full time teacher should not "practice law" for the primary purpose of earning money. He has made his decision to look to teaching for a living and owes his school full time work.

*Dean Covington:* Some outside work is proper and helpful in development of the teacher and consequently results in a better teacher for the school. There should be a limit in respect to time spent and money earned—probably to one fifth of time and salary.

*Dean Forrester:* If his income is adequate, he should engage in outside work only if it makes him a better teacher. Obviously, a professor can do more for and with his students if he devotes 100% of his time, rather than 50 or 75% of it, to the many tasks involved. This is particularly true with reference to individual counseling, which has become a thing of the past in too many law schools. There is always work to be done inside the law school. But the school must be able to pay for it adequately.

*Prof. James:* In my own opinion a certain amount of outside legal work enriches the teacher's contribution to his teaching and research. The amount will vary with circumstances. A good law teacher should however put his teaching and scholar-

ship unequivocally first among his efforts and the claims upon his time.

*Prof. Kadish:* None which makes significant inroads into his time and energy for teaching and scholarship.

*Dean Maxwell:* A limited amount of "outside work" which contributes to a teacher's competence in his field is desirable. If a law teacher must do outside work simply for the purpose of supplementing his salary then you do not really have a full time law teacher.

*Dean Riehm:* "Outside work" is proper and necessary for any full time law teacher to keep him in touch with the developments in practice in his field of specialization. Under no circumstance should he have to work simply to earn a living. His outside work should be related to his specialty but he must maintain the outside contacts or lose all touch with reality and thus fail as an effective teacher.

*Dean Sneed:* A reasonable amount of outside work is proper for a full-time law teacher. I think that briefing and writing are the best types of outside employment for law teachers. It is an unusual person who can engage in the law practice and at the same time do a first class job of law teaching. (We have such a man on our staff and he is the only person I have ever known who accomplished both tasks satisfactorily. However, he splits his life squarely in two by practicing the first three days of the week and teaching the last three. He never mixes the two.)

*Dean Wallace:* Full-time law teachers should be able to participate in outside activities so long as those activities do not interfere with their primary job of being teachers and scholars. An occasional brief might actually be of help to the teacher in his field. Acting as a consultant might give the law teacher new insights.

#### IV. Is University Affiliation Essential?

*The Problem:* University dominance over law school finances and policies is often complained about. Yet university affiliation is generally agreed to be desirable; while independent law schools often seem to be financially better off. Some say that the ideal situation is an autonomous law school, affiliated with, but not subjugated by a university; others favor university control in detail.

**QUESTION:** What, if any, kind of university affiliation is best for law schools?

**ANSWERS:**

*Dean Amandes:* An autonomous law school, affiliated with a university, and preferably on the same campus as the remainder of the university, is probably best. A law school, as a professional school, has interests which are not necessarily the same as those of other departments of a university. Freedom



to deal with and promote these interests is essential. On the other hand, an intellectual atmosphere surrounds most campuses and a law school stands to benefit from the association.

*Dean Blakely:* The most desirable situation is an autonomous law school affiliated with a university, assuming that that is financially feasible. University control in detail inevitably leads to classifying various phases of law school operation with similar phases in the other departments of the university, resulting in mis-classification of the law school's operations.

*Dean Covington:* Close university affiliation with more independence of larger law schools.

*Dean Forrester:* Full and complete affiliation within the framework of a great university is the best milieu for a law school, a law student, and a law professor. Furthermore, the law school should strive to be a contributing part of the university in its intellectual endeavors. Too often the professional schools are inclined to become isolated and even aloof. In a university, the law professor has much to contribute—and much to learn.

*Prof. James:* I believe that affiliation with a university is highly desirable. I think that legal education needs the cross-fertilization which only a great university affords. Moreover I should not think a law school which did a proper educational job could be self sufficient financially unless as a part of a university institution.

*Prof. Kadish:* Law school wholly integrated into the structure of the university.

*Dean Maxwell:* A Law School should be an integrated part of a good university, retaining, however, basic control over its curriculum and appointments, subject, however, to the normal administrative review of university authorities.

*Dean Riehm:* I think there is far too little accurate, factual data of evidential value available to support a conclusion of university dominance over law school finances. A law school is properly one of the professional schools of a university campus and not elsewhere. If law school deans and professors cannot assure that the school maintains its proper place in the university community, we are pretty poor advocates.

*Dean Sneed:* University affiliation is essential for a top flight law school. However, the law school should be sufficiently autonomous to be able to select its own faculty, purchase its own books and supplies, work out its own curriculum, and do all the other essential educational items. As far as I am concerned the University can look after the grounds, the heat and water, and provide all the niceties that go on around the college campus such as the football team, plays, etc.

*Dean Wallace:* I believe strongly that it is best for the law school to be an integral part of the University. A wise University administration will recognize the problems of the law school.

## V. Objective vs. Essay Examinations?

*The Problem:* In some states (e.g., New York, and recently Ohio), Bar and some law professors' examinations employ objective questions as part of the examinations—usually with vehement expressions of dislike for such questions being expressed by students. Such questions are said to inculcate habits of precise thinking and better content knowledge.

**QUESTION:** Should objective questions be used, and to what extent if any?

**ANSWERS:**

*Dean Amandes:* They should not. A) Tying this answer to the next, one of the reasons that students cannot do a better job with the English language is that they have never been required to. Undergraduate objective examinations are a poor means of improving communicative skills, oral or written. Law schools should not perpetuate their predecessors' errors. B) This is especially true in bar examinations where the emphasis should not be upon the amount of knowledge possessed by the applicant, but rather upon how well he can use the certain minimal amount which it is assumed that all neophyte lawyers possess.

*Dean Blakely:* Law examination questions should be primarily of the essay type. Objective questions can be used to limited extent only.

*Dean Covington:* Yes—but use should be limited to  $\frac{1}{5}$  of the examination.

*Dean Forrester:* In some courses, objective questions are helpful as a means of determining the amount of content which the student has gained. This may also indicate the degree of work performed. In general, the larger portion of the exam should be devoted to problem questions requiring the student to identify the issues of law involved, to set forth the principles of law applicable to each issue, and to analyze the issue in relation to the principles of law as applied to the particular facts of the case.

*Prof. James:* I do not favor objective type of examinations in law. They do not test the ability to organize and put things together or the ability to write. The precision they teach is the false precision of over-simplification. They stress the acquiring of information rather than the kind of reasoning that represents the sort of thing a law school should impart.

*Prof. Kadish:* Depends on how skillfully the questions are drawn and the subject matter being tested. Unqualified opposition to all objective questions in all courses is foolish. Useful compromise is examination of part essay and part objective questions.

*Dean Maxwell:* There are some fields where a well drafted objective examination can be used as a part of an examination procedure effectively testing some aspects of the field which cannot be reached ordinarily in an essay examination.

*Dean Riehm:* Objective questions serve a valid purpose in certain situations in that they permit examination of knowledge in broad areas that cannot be covered by essay questions, e.g., in the Internal Revenue Code or the Bankruptcy Act where certain "yes" or "no" answers are possible. Except in such areas as above described there is grave doubt as to whether objective questions should be used.

*Dean Sneed:* I am not an expert on methods of examination. I have never used objective questions and do not believe that I ever shall. It may be that objective questions inculcate habits of precise thinking and better content knowledge, but I am not yet convinced that such is true.

*Dean Wallace:* I have no objections to well-prepared objective questions but believe they should be used sparingly.

## VI. Is Good Grammar Essential for a Law Degree?

*The Problem:* Student lack of command of English grammar has been much remarked on recently. Some say that no one should be graduated from law school who lacks such command, while others say that it is not a responsibility of the law school.

**QUESTION:** What should be the policy of law schools as to this problem?

**ANSWERS:**

*Dean Amandes:* It is lamentable that good grammar is as uncommon as it is. Everything possible should be done to inculcate pride in polished English. However, lack of this command should not be a reason to deny graduation from law school to an otherwise good student. On the other hand, the difference between the marginal student who successfully completes the study of law and the one who does not is very often determined by their relative abilities in English usage. This is as it should be.

*Dean Blakely:* This is an extremely complicated problem. Some compromise with the lack of command of English grammar under present circumstances is perhaps inevitable. Our efforts should be toward strengthening pre-law instruction in this respect rather than setting up special courses in law school for this purpose.

*Dean Covington:* A hard question. It is not the responsibility of the law school—but can a law school afford to permit them to graduate! A required remedial summer course might be helpful.

*Dean Forrester:* Obviously, lawyers should be able to express themselves correctly. The basic training in grammar should have been completed before admission to law school, but if not, the law school should do what it can to remedy the situation. Weakness in expression, particularly in writing, is a national problem of substantial proportions. Each segment of the educational process should be willing to do what it can to help. The most effective work can be done in the elementary and secondary years of school and in the home. The law schools receive the students at the end of the process and it is difficult to change old and bad habits of expression at that point.

*Prof. James:* I have noted, and deplore, the lack of command of English—the ability to write with force and clarity as well as merely grammatically. This is primarily (I think) the responsibility of secondary schools and colleges (and primary schools too!). But we do, and should, try to make up for their deficiencies (where they exist) in our writing program.

*Prof. Kadish:* Don't graduate an illiterate student. Not our responsibility to teach grammar, but is our responsibility not to place stamp of approval on prospective lawyers who lack a major qualification for functioning as a lawyer.

*Dean Maxwell:* Certainly an ability to write effectively should be an attribute of every law graduate. If a student is not decently equipped in this sense he should be required to take remedial courses designed for this purpose in many departments of English.

*Dean Riehm:* The policy of the law schools with respect to English usage is easily stated. The difficulty comes in implementation. All law schools would be happier if the students' grammar was better but unfortunately extended experimentation at this institution leads us to the conclusion that if a student has not developed correct English usage by the time he reaches law school there is nothing the law school can do to permanently improve his English usage. Thus, all we can do is continue to protest to the colleges and high schools and ask them to emphasize correct English usage.

*Dean Sneed:* I am heartily in accord with those who say that no one should be graduated from law school who lacks a command of English grammar. I would go further and say that there should be an entrance examination for law and that those who could not write a reasonably clear, concise, and correct paragraph should be denied admission until they have an adequate command of English.

*Dean Wallace:* I believe that the law schools should meet the problem of a lack of command of English grammar when it is encountered. Command of English grammar is essential to a first-rate lawyer in communicating his ideas. It may be that it should not be our responsibility, but we are responsible for the competence of the lawyers we produce.