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Legal Education in the United States by Albert J. Harno

George Negg Stevens

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defraud was guilty of a felony by virtue of Ohio Revised Code Section 1115.23 (Ohio General Code Section 710-176).⁸

There is therefore a conflict among the courts of appeals of Ohio as to whether one doing the acts mentioned above is guilty of forgery⁹ or of merely drawing a false note without credit.¹⁰ Although both crimes are felonies under Ohio law, the former carries a far greater penalty,¹¹ making the need for a distinction great.

JOHN A. SCHWEMLER

Book Reviews

The following are professional comments on the report on Legal Education in the United States prepared by Albert J. Harno, Dean of the College of Law, University of Illinois, for the Survey of the Legal Profession.

LEGAL EDUCATION IN THE UNITED STATES. Albert J. Harno. San Francisco: Bancroft-Whitney Company. 1953. Pp. v, 211. \$1.50.

The present worth of legal education in the United States is apparently in some doubt. During the past few years a number of articles have appeared in legal periodicals condemning present teaching techniques and practices as impractical and uninspired. The American Bar Association, as a part of its Survey of the Legal Profession, asked Dean Albert J. Harno of the University of Illinois Law School to look into the matter and make a report. This he has done with vigor and courage. "Legal Education in the United States" tells the story of legal education from the formative periods of American legal study to the present time. In addition to the historical picture, Dean Harno has included two extremely important chapters, one on the criticisms of modern legal education, and the other on a present appraisal of it.

The reaction to Dean Harno's report varied with the reader. For example, *Time* of April 20, 1953, carried a banner headline "This Side of Chaos." If the situation is that serious why has not the American Bar Association, through its Committee on Legal Education and Admission to the Bar, long since moved in and corrected the alleged mess? Actually, legal education has never been better. The training that is being given to the present generation of law students is the soundest, the most complete, that any system has ever devised. Dean Harno points out that it might still be improved. The public reaction is that since improvement is possible the education presently being given is worse than useless.

Such an attitude makes change for the better rather difficult. A look at the record should suffice to show that while there may be weaknesses in the present system, its strength is easily predominant. The men who have gone out under it have been able to grasp and handle the many complex problems of modern society reasonably well. They have been instrumental in the development of new fields of law as the need occasioned. The charge that young lawyers are not competent is a dangerous generalization. It is hard to support on the individual records of the young men newly admitted to the bar. The vast majority of them are able to do and do well the tasks that come to them in their capacity as fledgling lawyers.

Dean Harno points out that the fundamental problem which must be accepted before any attempt is made to say whether legal education has failed is "What is legal education trying, or should it be trying, to accomplish?" The objectives of legal education are difficult to define accurately. The training of lawyers and the improvement of the law are two generalized answers. What educational program will best produce this result? Dean Harno suggests that we should make an effort to determine what the qualities are which make for a successful lawyer. Do they include the capacity to adapt to new tasks, the ability to educate one's self to changing demands, a deep sense of social responsibility?

The main criticisms of modern legal education, according to Dean Harno, are (1) a lack of perspective—that the law schools don't teach everything that any lawyer might have to do; (2) a failure to provide synthesis—that is, to tie in history and universals; (3) a lack of training in practical skills—that is, to teach legal draftsmanship; and (4) a failure to inculcate professional standards and ethics.

Dean Harno then gives his appraisal of legal education. He suggests that law school men have done too little thinking in terms of aims and objectives of legal education, although he points out that many individual law teachers have done some excellent work in this area. He suggests that there is a need for committee activity in each law school, under the guidance of a committee of the Association of American Law Schools, whose task it should be to determine aims and objectives of legal education. He points out that the progress that has been made in the past through the establishment of quantitative standards has now reached the point of diminishing returns. The time has come for the adoption of quality criteria. He stresses the lack of adequate financial support as one of the major reasons why legal education has failed to make further strides forward. Lack of adequate finances is the underlying reason for large classes, little individual student attention, inadequate libraries for seminar work, mediocre trial and appellate court programs, and other skill training courses. The overcrowded curriculum is, in a sense, a part of the financial

problem. Dean Harno charges that the law schools have not come to grips with the problem of what subjects should be taught in law schools, although he points out again that individual and committee attempts to meet these challenges have not been lacking.

He suggests that there is a need for bridging the gap between law school and practice, and he states that this is the joint responsibility of the bench, the bar, the bar examiners and the law schools. His report makes it clear that the real problem arises from the fact that there is no real agreement as to what this gap actually is. He concedes that the responsibility for filling the gap lies with the law schools, but he feels, and rightly so, that there is a need for a more definite understanding as to what is missing before charging the law schools with failure to meet the need. Dean Harno points out that rapprochement between lawyers and law teachers is essential if legal education is to move forward. He traces the growth of the breach between these two groups of the legal profession with its resulting bad public relations and of the tendency in recent years to close this breach.

Whether one construes Dean Harno's book as an admission that legal education has failed, or as an excellent and courageous attempt to show the points where it might be improved without overstressing the great strides that it has made, this book is a real contribution to legal literature.

Inherent in Dean Harno's appraisal of the present picture is the feeling that a great deal of the reaction of the bar to the law schools is the result of poor public relations between practicing lawyers and law teachers. Most practicing lawyers do not know what the law schools are doing. Many practicing lawyers do not understand what the law schools are trying to do. A good many of the criticisms are vague generalizations which would not survive a meeting between the two groups around a conference table. If, as a result of this survey, lawyers and law teachers will sit down together and, instead of throwing brickbats, try to determine what legal education should accomplish, it will mark the first milestone in the next great improvement of legal education. The law schools cannot solve the problem of legal education alone to the satisfaction of either the public or the lawyer population. Even if they saw the way, they could not travel it without the cooperation of those responsible for admission to the bar. The sound as well as the long-range determination of an adequate program of legal education requires a re-evaluation of the objectives of bar examinations and of legal education from college to retirement. Cooperation among the interested groups is the only device that can successfully meet the challenge.

GEORGE NEFF STEVENS*

* Professor of Law and Dean of The University of Washington Law School.

LEGAL EDUCATION AND THE SURVEY

Early in 1953 a report on legal education in the United States was prepared for the Survey of the Legal Profession by Dean Albert J. Harno of the College of Law, University of Illinois.¹ Were we to judge this book by its summarization in *Time*,² we would be forced to conclude that Dean Harno considers legal education to be in a bad way; in fact, as *Time* headlines it, "This Side of Chaos," and not far this side, either.

A careful reading of the book, however, persuades one that Dean Harno is not as violently critical as the excerpts and interpretations in *Time* would lead us to believe. Indeed, he is much milder than Mr. Arch M. Cantrall, a West Virginia lawyer who really tears apart law schools and law teachers in an article which, to say the least, has aroused members of the profession.³

Yet Dean Harno does have many criticisms of legal education, and, moreover, as a reporter, he sets forth criticisms by other people, with some of which he may not be in agreement.

According to the report, criticisms of the professional programs of law schools can be grouped broadly under one heading; namely, that they do not adequately prepare students for the tasks they will perform in practice.⁴ The more specific defects are summarized as follows:

1. Programs of instruction, with their emphasis on case study, are time-consuming, without commensurate educational returns to the student.⁵

2. Programs of instruction are lacking in perspective as to the scope and implications of the law and as to the problems the lawyer must solve in practice.⁶

3. Programs of instruction fail to provide a synthesis of the law and a synthesis of the law and related subjects.⁷ The training emphasizes primarily the particulars of the law, fails to give students a historical grounding, and ignores the importance of studying law in terms of universals. Students are schooled to see the trees and not the forest. Chiefly to blame for all this is the case method.⁸

¹ HARNO, LEGAL EDUCATION IN THE UNITED STATES (1953) This will be cited subsequently as HARNO.

² *Time*, April 20, 1953, p. 75, col. 2.

³ Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?* 38 A.B.A.J. 907 (1952)

⁴ HARNO at 137

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Id.* at 144.

4. Programs of instruction neglect training in the practical skills a lawyer must have.⁹ This is the most vocal criticism of legal education.¹⁰ "The criticism that there is a gap between what the young lawyer learned in school and the skills demanded of him in practice is a valid one."¹¹ As legal education is now dispensed by the law schools, law school graduates, although they have passed the bar examination, are not *ipso facto* qualified to assume the responsibilities of the practice of law.¹²

5. The programs of instruction fail to inculcate in students an understanding of professional standards and ideals.¹³

It is not my purpose to attempt a detailed answer to these criticisms, nor, for that matter, to deny that there is any truth in them. However, I do not believe that the situation is all black, and neither does Dean Harno, for near the end of his book he points out some encouraging developments among the law schools themselves.¹⁴ Nevertheless, I think that perhaps the picture might have been painted a little more optimistically.

The uninitiated reader may well get the impression that things have been pretty horrible but that there is a gleam of hope for the future, whereas, in my humble opinion, legal education is good, although the people entrusted with it are constantly striving to make it even better.

The complaints about the poor old case system have been going on for years, yet it remains the basic tool of law study, and Dean Harno points out that lawyers and teachers agree that it is an important phase of legal education.¹⁵ However, today most schools, if not all, supplement it with other techniques. Moreover, the case system does not necessarily involve laborious recitation and discussion case by case. Indeed, the teachers of my acquaintance do not handle it in that manner except possibly in the beginning. There is no reason why the case system has to be too time-consuming, and certainly it has great value in developing careful reading and analytical thinking—qualities of vital importance to the lawyer.

Turning to the second main criticism listed in the report, I am not at all certain that programs of instruction are lacking in perspective. It seems to me that the law student during his course is given a comprehensive view of the law as a whole, and I know that our own faculty is con-

⁹ *Id.* at 137.

¹⁰ *Id.* at 146.

¹¹ *Id.* at 147.

¹² *Id.* at 154.

¹³ *Id.* at 137.

¹⁴ *Id.* at 180.

¹⁵ *Id.* at 137.

stantly stressing that the law should not be regarded as a series of isolated and unrelated courses.

The criticism that programs of instruction fail to provide a synthesis of the law and related disciplines presents a problem of great difficulty. Again, blame is placed upon the case method.¹⁶ It is not easy to see why the case method should bear the brunt of the attack. Moreover, I am not at all certain that the criticism is justified. The teachers whom I know provide enough synthesis. After all, law schools should not become too involved in the material taught in economics, the social sciences, and the like. Law students are supposed to arrive with some background of general education. The intelligent teacher will equate the particular legal problem with the world around him. I doubt if any substantial number of law professors today teach law in a vacuum.

Actually, all the above criticisms presuppose that the law teacher is either stupid or lazy or both, and my own experience with the breed has been exactly the opposite.

To me the most interesting criticisms in Dean Harno's report are the fourth and fifth.

Number four is that the programs of instruction neglect training in the practical skills which a lawyer must have. Mr. Cantrall develops this theme in some detail and with a good deal of acidity. In fact, if law teachers are as bad as he claims, they ought to be taken out and shot at sunrise, or, at the very least, transferred to some occupation requiring no brains.

Unfortunately, Mr. Cantrall appears to be unfamiliar with what law schools are doing along this so-called practical line. Even so, few schools, if any, have gone as far as he proposes. And although undoubtedly some practical skills may be introduced to the student in law school, many of them, as Dean Harno indicates, cannot, as a practical matter, be learned in the artificial atmosphere of the law school, but must be picked up in actual practice.¹⁷ For example, I do not believe that the intricacies of dealing with clients can be taught in law school, beyond a few general suggestions which most schools probably give. Nor does the rather vague subject of "negotiation" lend itself to law school teaching. It, too, must be mastered, if, indeed, it may ever be mastered, by actual doing and not by playing at it in school.

Ability in the trial of lawsuits, too, comes from experience, although the law schools can and do give some training in this phase of the lawyer's work. Moreover, as all of us who have tried lawsuits know, success in trial work comes mainly from thorough preparation and knowledge of

¹⁶ *Id.* at 144.

¹⁷ *Id.* at 154.

the case. And law schools certainly harp on thoroughness and careful preparation.

Most important of all, the criticism overlooks the human element and assumes that the young men who have survived the ordeal of law school and the bar examination are lacking in common sense, initiative, and resourcefulness. When I was in law school many years ago, there was almost nothing of a "practical" nature. But that did not mean that we were frozen in our office chairs when a client arrived with a peculiar problem. It may take the young lawyer longer to perform his service, but it does not follow that he performs it incompetently. And the added time spent does not hurt the client, for a young lawyer's time is not as expensive as that of an older, more experienced person. Besides, even experienced lawyers are continually faced with entirely new problems, and at first they have no more idea what to do than does the fledgling lawyer. Are they for that reason incompetent to serve the public?

It is simply impossible to teach a student all the things he must do, and even if it were possible, laws and procedures are constantly changing, so he is always confronted with something new.

I agree that many of the basic skills should be imparted in law school, but this is already being done, and an intelligent young lawyer will work out the unfamiliar things just as an older lawyer does. There is a young lawyer of my acquaintance whom I will call Smith, although that is not his name. When Smith left law school he joined a small firm of only two men. Their idea of training a new lawyer was to let him work out his own salvation. The first three matters handed over to Smith involved completely unfamiliar things. But he went to work on them and did the jobs to the complete satisfaction of the clients and his superiors. We are not graduating classes of morons. In the last analysis, the right man will give proper service, even though for awhile it may take him longer to do the job. The proof is in the product, and my lawyer friends assure me that the product is good. Incidentally, most of them stress the importance of grounding students in fundamentals, rather than trying to teach them all the mysteries of practice, which can be learned better after they are in it.

Finally, it is contended that programs of instruction fail to inculcate in students an understanding of professional standards and ideals. I do not think this criticism is well-grounded. Most schools have courses impressing upon students the standards and ideals of the profession. Of even greater effect, I believe, is the influence of the individual teacher. It is an unusual teacher who does not convey to his students the importance of honesty and integrity in the lawyer.

In our own law school we go even further. We have a committee of

alumni which works with our Student Bar Association to the end that every senior shall have an opportunity to meet and talk with certain lawyers selected for their ability and character. It is contemplated that these lawyers will help the seniors realize that they are entering a noble profession and that chicanery, dishonesty, and sloppy work have no place in their professional lives.

Of course, some people will be shysters no matter how much indoctrination they have in morality, and others will be upright without any indoctrination. Exactly how many law students are influenced from evil to good by their law school training, no one can say, although my private opinion is that honesty and integrity are for the most part inherent in a person. In any event, to say that law schools neglect the character phase of a student's development is to overlook the facts.

In summary, then, I believe that, on the whole, legal education is sound, but that faculties are constantly on the alert to improve it, and that many improvements have been made in the last twenty-five years. It is too bad that its essential soundness has not been emphasized, rather than its defects. Maybe "accent the positive" is a good slogan here as in other phases of life.

FLETCHER R. ANDREWS*

LAW SCHOOL CONCERN FOR PRELEGAL AND CONTINUING LEGAL EDUCATION

Among the criticisms levelled at modern legal education by Dean Harno in his survey of Legal Education in the United States is that of inattention to the prelaw course of study. Says he, "the winning of optimal educational advantages for the student from his prelegal course, and the synthesis of legal and non-legal materials and ideas in relation thereto are among the foremost problems in legal education today." Failure of the law schools to show interest in the content of the prelegal program — "what matters is that the applicant for law study has accumulated credit over a period of three years of college work" — receives the brunt of the Dean's critical blows. The lack of guidance offered to prelaw students is deprecated, for he has little faith in the outcome of a situation where the student is left to his own devices in the selection of his prelegal work. In short, the law schools "have been short sighted , if not neglectful of their responsibilities, in focusing their attention exclusively" on the years the student spends in law school.

For the record, the law schools are entitled to some defense to this charge. While there has undoubtedly been some neglect and some short-

* Professor of Law and Dean, School of Law, Western Reserve University.

sightedness, the more valid explanation lies in the fact that the law schools could find no demonstrable basis for urging any one undergraduate curriculum or major over the many others available. Faced with this fact, the law schools have been near-unanimous in commendably refraining from prescribing the content of pre-law work. The reason has not been lack of concern so much as lack of conviction that any particular subject-matter provides the open sesame to the later successful study of law. In this, the law schools have differed markedly from their sister professional schools, which have legislated with respect to preprofessional courses to the point where the undergraduate colleges have all but lost any say in the matter. This contrast has undoubtedly contributed to the tendency to mistake avoidance of educational dogmatism for pedagogical disinterest.

Legal educators, both singly and organizationally, have been aware that the resulting situation, with its appearance of unconcern, was not a happy one. Individual law schools have attempted through prelaw pamphlets to provide guidance within the established pattern of non-prescription of courses, but the common admonition in these pamphlets that the prelaw student secure a "good liberal education" has of course left these schools wide open to criticism for offering meaningless generalities rather than concrete suggestions. That for which these individual schools have been groping has been isolated in part at least through the work of the Association of American Law Schools' Committee on Pre-Legal Education, first created as a continuing committee of the Association in 1950. In a footnote Dean Harno refers to the work of the committee as offering a "promising approach to the subject of prelegal education," but nowhere is the approach identified. Since adopted as Association policy, this approach is bottomed in the conviction that what is important in the prelaw years is the development in prospective law students of basic skills and insights which are fundamental to the later attainment of legal competence. These basic skills and insights are said to be three: (1) language comprehension and expression; (2) critical understanding of the human institutions and values with which the law deals; and (3) creative power in thinking. An effort is made to break down each of these three into subdivisional facets of the whole; thus language comprehension and expression is conceived to involve both the skill elements of adequate vocabulary, organized presentation, and effective recollection, and also sensitivity to the fluidity and deceptiveness of language.

In the Committee's view, "the development of these fundamental capacities is not the monopoly of any one subject-matter area, department or division." Rather, their development in any student depends upon that student's background and learning process and upon the relative quality of teaching in the various subjects in his college. In other words,

what really counts is not so much the subject-matter studied as the quality of education that is imparted. This is true even of English, for with a given student in a particular college situation the study of a foreign language may provide better training in word comprehension and expression than would a course in Speech or English Composition. Consequently, the answer to the question which Dean Harno puts is not as easy as he impliedly asserts: "Even if we assume that the schools cannot agree on the full content of a prelaw program, does it follow that they cannot agree on some courses, starting with English, that the student should take and in which he should show proficiency as a condition to being admitted to law study?" The understandable temptation to prescribe prelaw content is not as a general proposition the realistic way in which to win the optimal educational advantages for the student from his prelaw course. The seeming "hands off" attitude of the law schools, when properly understood and constructively channeled along lines drawn by the Association Committee, has much to commend it.

Perhaps more valid is the Dean's charge that law-school indifference to pre-legal education has prevented the attainment of that pedagogical millennium commonly known as synthesis of legal and non-legal materials. Yet even here there is much justification for the view that the attitude of the law schools has been more one of lack of conviction than one of unconcern. Some law schools have come to the definite conviction that they must concern themselves with at least a part of the student's prior training in relevant non-legal materials; for instance, such a view lies at the basis of the 2-4 plan, as Dean Harno observes. But it is understandable that most law schools have hesitated to take measures which would transfer to them the major responsibility for teaching what the law student is to learn of the economic and social institutions with which the law deals. Few will disagree with the assertion that there is needed "a fusion of prelegal and legal work involving a more efficient employment of the prelegal years", the difficult problem concerns the achievement of this fusion without putting the law schools into the business of undergraduate instruction.

One of Dean Harno's criticisms of the present state of legal education had sufficient reader appeal to make *Time*. Emphasizing that there are, on the law-school curriculum, ever mounting pressures for the recognition of newly developing fields of law, for the achievement of breadth and perspective, and for training in the practical arts of legal craftsmanship, the Dean points out that most schools are attempting to pour all this into the ancient measure of a three-year course of study. "What is resulting is something just this side of chaos." It is an exaggeration to describe the present situation as little short of chaotic, yet the assertion gives point to

the fact that even with maximum efficiency from the prelaw period the traditional three years of law study are inadequate for effective training of today's lawyer. As one possible solution, "least desirable" but "most likely to be taken," reference is made to the hoary proposal to extend the period of formal law study beyond the orthodox three years. Cited as supporting evidence are the nine schools which have already gone over to what has been called the "three years plus" basis, i.e., three academic years plus one or two summer sessions.

The "three years plus" plan, which Dean Harno's own school has adopted, has much to commend it and may well become the standard pattern. But it is difficult to believe that it presages further extension of the period of law study before admission to the Bar. The summer sessions can be, and are expected to be, attended by the student during his three academic years, with the result that in terms of calendar years the student has been delayed not a bit. This renders the practical effect of such a plan quite different from any plan the result of which would be to delay the student's admission to the profession. If ever there was a serious possibility of a four-year law school requirement, it has been removed for the foreseeable future by the recent A.B.A. and A.A.L.S. adoptions of a three-year pre-law requirement and the formidable pressures which now oppose further extension of the overall period of preparation for law practice. The most that is likely to happen on the "extension" front is, therefore, the movement to require three *calendar*, rather than three *academic*, years of pre-admission law study. This means that the answer to the problem of the overcrowded curriculum, beyond what can be offered by the addition of a semester and by curricular reorganization within this enlarged period, must be found in post-admission education.

It is in some ways surprising that Dean Harno's consideration of the relation of the law schools to prelegal education is not matched by equal attention to the schools' relation to continuing legal education. In discussing the impact of professional organizations upon legal education, he does twice refer briefly to A.B.A. concern with post-graduate legal education, but the failure of many schools to offer such continued educational opportunities he does not list as a criticism of legal education nor is the matter so much as mentioned by him in his appraisal of the present status of legal education. Very possibly the Dean, like many others, views this area as the province of bar associations, the Practising Law Institute, and like bodies of the organized Bar. That there is a place for such groups in the continuing education of the lawyer no one will deny; yet equally clear is the opportunity, if not the responsibility, of the law schools to provide formal legal education which cannot be taken by the lawyer *qua* student. There would appear to be no occasion for undesira-

ble overlap or jurisdictional conflict; the activities of the organized Bar seem to lie naturally in the direction of short institutes, refresher courses, and how-to-do-it sessions, whereas the logical function of the law schools lies in finishing for the interested lawyer the more formalized curricular program necessarily left uncompleted with his law-school graduation and admission to the Bar.

Stated in other words, the law schools would seem under present and foreseeable circumstances to have as great a stake in the post-admission education of lawyers as in the prelegal education of law students. For with, at most, three calendar years available before a student enters the profession, the soundest educational policy for the law schools is to provide that student with a "general education" at the legal level. That is, the schools should bend every effort to train the *law student* in those fundamental legal principles, skills, and insights which must be the equipment of every practitioner if the profession is to maintain a high standing in society. Then, after admission to the Bar, let the law schools offer to provide the *lawyer* with continued legal education in those areas wherein he finds from his experience that he stands in need of further training, either more specialized or more varied. In this sense those law schools which focus their attention exclusively on the years the law student spends in law school are *doubly* "shortsighted, if not neglectful of their responsibilities" — once for failure to look to the prelaw years, and again for failure to carry the educational process beyond the point of law-school.

FRANK R. STRONG*

* Professor of Law and Dean of Ohio State University School of Law.

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