THE LAW SCHOOL AND THE FUTURE

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John Lyons, with characteristic grace and consummate lawyer's skill, has quite obviously stated the case in its most favorable light. Of course, every lawyer on occasion lets his advocate's zeal carry him just a little beyond what the facts, coldly appraised, will truly justify. Whether Dean Lyons, in his desire to get me properly launched, has applied just a touch too much power I will leave for others to decide. It is enough for me to say that the task of measuring up to the standards set in the dean's office by Samuel Fegtly, Byron McCormick and John Lyons is a formidable one and I have embarked on it with enthusiasm and pride, and not a little surprise at my temerity.

I am honored that the editors of the *Arizona Law Review* have invited me to present here my greetings to their readers. The Review is new since I last had any official connection with the law school but its excellent pages were not unfamiliar to me as a practicing lawyer and later as a teacher. Now that I have been back in the College for a few months it is evident that the Review has immeasurably enriched legal education at the University of Arizona.

"To every thing there is a season," and in the life of a law school the occasion of a change of deans is naturally a time to take stock, to ponder the goals of the school and to evaluate its programs. The College of Law has always been a good school whose graduates are the best proof of its soundness. That we are now embarked on a thorough-going self-study most certainly bespeaks no dissatisfaction with the past but merely a recognition that law schools, like the law, must adjust prudently, but decisively, to keep pace with a changing society.

One who finds himself required to lead in the formulation of plans for a law school's future must start with the question of just what it is the school should be doing. The answer to that basic question is becoming increasingly complex and multi-faceted. This is particularly true of a school that no longer consists of a half-dozen or so law professors training a handful of students for predominantly general practice in small one- or two-man law offices in small southwestern communities. The College of Law now ranks as one of the largest in the West and will, when its faculty reaches proper size, have a correspondingly varied and demanding program of study. Its graduates move into an astonish-

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ing variety of careers. The growth, industrialization and urbanization of Arizona has led to the emergence of the large law firm, the large government office and the large corporate enterprise. At the same time, small law offices are by no means extinct; they continue to absorb a majority of our graduates. Nor can we ignore the fact that a measurable number of our graduates seek fame and fortune beyond Arizona's borders. Plainly, the school must be responsive to the needs of an increasingly diverse profession.

The mission of a major law school is best summed up for me by Dean Ames' description of the "threefold vocation of the law professor — teacher, writer, expert counsellor in legislation."[1]

Our first obligation is obviously to teach — to train lawyers, or more accurately, to train people for entry into the legal profession. But the question is *how* or *what* shall we teach? What is it that we expect our graduates to have when they have finished their three years with us? Professor Lon Fuller of the Harvard Law School has suggested that there are four competing conceptions of the objectives of legal education: (1) the imparting of knowledge; (2) the development of skills; (3) the exposure to learned minds; (4) the development of an understanding of the legal process.[2] Of course, none of these aims of legal education could be regarded as exclusive by any respectable law school. All must be pursued in some degree but not all can receive the same emphasis and choices must be made as to which is to be given the greatest weight in shaping the character of the school. For some, unfortunately, the issue is the simplistic question of whether the school will concern itself with theoretical matters or whether it will train its students to be "practical lawyers."[3] This false issue has done incalculable harm to relations between the law schools and the practicing profession and it has produced a few bad law schools. Certainly our aim is to produce graduates who will become first-rate practical lawyers. But there is nothing of more practical use to a lawyer than a sound grounding in the *theory* of law. He is simply unable to function adequately unless he is at home with the nuances and subtleties of basic legal concepts. Moreover, those who expect the law schools to turn out graduates who are possessed of all the practical skills and techniques of an experienced lawyer misconceive what is possible in the "hypothetical" atmosphere

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[1] Quoted in Griswold, *The Future of Legal Education*, 5 J. LEGAL ED. 438, 440 (1953).

[2] Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL ED. 189 (1948).

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

of a class or seminar room. Some things — the "how-to-do-it" of law practice — can really only be learned by doing. In any event, as the affairs of men become ever more complex, the legal theories that must be grappled with by law teachers and students grow correspondingly numerous and sophisticated. The conceptual problems of constitutional law, of criminal law, of antitrust or taxation are vastly more intricate today than they were even 25 years ago. And so Erwin Griswold's prediction that theory will become more, not less, important in the law schools' future seems inevitably true.[4] This does not mean that the schools should not and cannot do a better job of developing in their students some of the basic skills of lawyering, but that objective must not be allowed to dominate the law school.

In terms of Fuller's construct of legal education the law schools must either concentrate on imparting as much *knowledge* about law as is possible or devote most of their efforts to developing in their students an *understanding of the processes* in which the lawyer participates. He concludes that while knowledge of wide areas of the law is of course important, "the law" is obviously too vast to be covered in three years of law school. Basic concepts must be taught (hence the traditional, prescribed first year, year and a half, or in some cases two years) but the principal emphasis ought to be on creating understanding of legal institutions. That is to say, the student should be given a chance to explore as fully as possible all the different kinds of adjudicative processes, from arbitrative to administrative to judicial, and all the facets of the lawyer's role as counsellor, as advocate and as decision maker. Moreover, the student should be immersed in the "legislative" functions of a lawyer in which he makes rules and creates structures through negotiating and drafting contracts, forming corporations, as well as drafting court rules and public statutes.[5] The difficulty with this view is that it cannot be implemented without rather drastic changes in the law curricula and in the way resources are allocated to legal education.

The late Judge Jerome Frank scathingly criticized law schools for their preoccupation with the case method and the appellate process and their consequent neglect of *facts* — the raw stuff of life, law and lawyering.[6] His point was that law students were never exposed to law in action, to legal problems as they come to lawyers, all cluttered up with a lot of facts, most of them irrelevant, and with the neat legal issues,

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[4] Griswold, *supra* note 1, at 442.

[5] Fuller, *supra* note 2, at 192.

[6] FRANE, COURTS ON TRIAL 225 (1950). See also Frank, *A Plea for Lawyer-Schools*, 56 YALE L. J. 1303 (1947); Frank, *Why Not a Clinical Lawyer-School*, 81 U. PA. L. REV. 907 (1933).

if they are ever neat, all tucked away among the facts the casebook editors so considerately, and in his view misguidedly, edit out to spare the student the agony of fact analysis. His call, repeated regularly, was for "lawyer schools built around legal clinics where teachers and students would undertake to perform sophisticated lawyer's tasks using living, not canned, facts."[7] The Legal Aid Clinic located in a law school is an example of the sort of operation Judge Frank had in mind, although he thought clinical work should represent a much wider spectrum of the lawyer's experience than is available in legal aid work. It is important to emphasize that Frank was advocating no trade school approach to legal education. He insisted that the students' exposure to law in action must be illuminated by constant exploration of the academic, that is to say theoretical, implications and explanations of what they are experiencing. Their clinical work would be tied closely to seminars and courses in which teachers would require the students to generalize about the specific operations in which they had participated. In this way, they would acquire that understanding of Fuller's "legal processes" that would enable them to find their way around more quickly in unfamiliar fields of practice when they emerge from the law schools. They would also gain insight that would better prepare them to discharge their professional responsibility for law reform.

The natural forces within a law school — student and teacher dissatisfaction with the case method after the first year and a half when it is a glorious success — are pushing those who will be pushed to develop new teaching techniques during the second and third year. A greater use of the problem method and of seminars and an increased reliance on self-education through independent research seems inevitable, at least where the resources to support it are made available. No one doubts that service on a good law review such as the one in which this note appears is one of the best educational experiences a student can have. A glance at the student work appearing in this volume will persuade anyone that the training these authors have received in analysis, synthesis and written expression is practically unmatched in legal education. Unfortunately, the experience is limited to a small number of students who, paradoxically are the least needful of special training of all our students. The need to expand the availability of this kind of educational experience should accelerate the tendency to break away from the strict casebook method in the second half of the second year and in the third year.[8]

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[7] FRANK, COURTS ON TRIAL 234-35.

[8] See Gellhorn, *Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964).

Still another source of exposure to living law can be tapped for the benefit of our students. Ames noted that law professors are more than simply teachers — they are writers and counsellors on legislation as well. Given the time and resources, law teachers have unique opportunities to contribute deeper understanding of our legal system, to illuminate its imperfections and to explore ways in which it can be improved to serve society better. Not only is the law enriched by such professional activities, but the effectiveness of the researcher's classroom teaching is measurably enhanced. Add to this the legal training available to students privileged to assist in research activities and the gains are well worth the expenditure of resources. The College of Law has experience to prove the point. To cite only a few examples, my colleagues Professors Claude Brown and Charles Smith have done valuable work in paving the way for adoption of the Uniform Commercial Code through a study of the effect of the Code on Arizona law. Professor Robert Emmet Clark is now in the editorial throes of assembling a multivolume work on water law — a project in which several students have participated. We are pleased to announce that Professor Ray Jay Davis has just been awarded a research grant by the Interior Department to study the legal implications of weather modification. Research and publication have always been important functions of a law faculty in universities willing to make such activities possible. But "legal realism" has produced changes in the nature of some legal research. The fashion these days is to engage in so-called "empirical research" aimed at gaining knowledge of the law, not only in the library, but in action. Most notably, the administration of criminal justice is being subjected to a virtual wave of empirical studies.[9] This kind of research is expensive, time consuming and difficult for lawyers to master, but it is clearly worth it and students employed in such projects, exposed to the legal processes in the flesh and required to dig out and evaluate facts, receive a legal education with an entirely new dimension. In a slightly different direction, the continuing education function of the law school, now discharged through the Arizona Law Institute in cooperation with the State Bar and soon with the new College of Law at Arizona State, provides a fine opportunity to expose student assistants to the vital concerns of the profession.

To explore the opportunities to improve legal education and to increase the law school's contributions to the state will demand imagination and energy on the part of the faculty. But it will also require those

[9] See, e.g., LAFAVE, ARREST (1965); NEWMAN, CONVICTION, THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL (1966).

who have the power of decision to make available the resources necessary to enable the faculty to discharge its obligations. There is no clear line between a "national law school" and a "local law school." But there is a clear difference between a good law school, of whatever size, and a mediocre operation turning out narrow-gauged law technicians. One basic distinguishing characteristic lies in the faculty-course ratio and its reflection in faculty and student research activities.[10] The enlargement of those activities does not come without price but the test of whether a school really wants to provide first-rate legal education will be found in its willingness or unwillingness to make it possible for its students to do more than drone through case recitations for three full years.

It is against this backdrop that the faculty at The University of Arizona now undertakes to chart its course over the next few years. Clearly our curriculum must be expanded and the expansion must include the creation of opportunities for students to do more research and writing. These opportunities will doubtless come in more seminars and in some types of clinical exposure. The resulting educational process will unquestionably be more demanding and our student body, already of good quality, will have to be even better.

We are already at work on these problems and will shortly announce our initial steps. There is a disposition to explore, to progress, even to experiment. We will succeed in most things but in others, we will no doubt falter. We will find that some objectives are beyond our capacities or our physical resources, but we will not lightly abandon any worthwhile goal. The life of the law is not only experience, as Holmes said, but change. If we need immediate proof of that axiom, we need only to look to the new College of Law at Arizona State University, whose dean and faculty we warmly welcome to our midst. With a "competitive partner in legal education" joining us, the future of legal education in Arizona is a bright and exciting prospect.

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[10] Jones, *Local Law Schools vs. National Law Schools: A Comparison of Concepts, Functions and Opportunities,* 10 J. LEGAL ED. 281 (1958).