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Crisis in Legal Education and the Legal Profession - A Response

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INTRODUCTION

CRISIS IN LEGAL EDUCATION AND THE LEGAL PROFESSION?—A RESPONSE

BY VED P. NANDA,* DOUGLAS V. JOHNSON**

The nature and kind of legal education American law schools have traditionally offered and are presently imparting, and its relevancy in meeting the needs of contemporary society, are currently under critical review.¹ Some highly skeptical observers have challenged the whole range of operations associated with law schools—admission requirements and selection procedures, curriculum, teaching methods, examinations, community participation, and research. And when a student's legal education is completed, the law student joins a profession whose role in meeting societal needs has also come under critical attack. Increasingly, questions of ethics and morality and professional responsibility are being raised, especially in the wake of Vietnam and Watergate, and warnings of an impending crisis are often heard.

Lawyers are by no means singled out as the creators or perpetrators of all the ailments prevalent in local, national, and international settings, but their special positions as the guardians and regulators of many legal and human relationships call into question their use of authority and power to give proper and responsible leadership. Additionally, while lawyers as products of society reflect societal values, as products of law schools they also reflect the competence, skills, and values they have acquired in their law schools. Thus the objectives of legal education, the means adopted to accomplish these objectives, and the end results of legal education are under severe criticism.

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¹See, e.g., Kinoy, *The Present Crisis in American Legal Education*, 24 *RUTGERS L. REV.* 1 (1969).

Among the critics of legal education and the legal profession are some of the keenest and closest observers of social and legal changes. They include social reformers, legal scholars, lawyers, jurists, public-interest groups, and law students. Such criticism is not new; however, its present intensity and depth are. In response, both law schools and the legal profession are appraising their respective roles. Several recent studies show their willingness and capability to recognize their weaknesses and to be receptive to change.² This symposium issue, *New Directions in Legal Education and Practice*, reflects this ongoing process of appraising and evaluating the role of law schools and the legal profession in contemporary society.

In his tribute to the *Denver Law Journal*, Professor Maurice Rosenberg, the President of the Association of American Law Schools, notes the shift in emphasis of some legal periodicals, including the *Journal*, from the traditional law review's speculative approach and law practice orientation to concern with "the social aspects of the law." The change in this journal's focus is in fact a reflection of the progressive change the University of Denver College of Law has experienced under the enlightened leadership of its Dean, Robert B. Yegge. The trend at the College of Law, as at many schools, is to focus on the interaction between law and the social sciences, and the *Journal* will continue to reflect the College's commitment to facilitate and encourage interdisciplinary work.

The first two essays in the symposium probe specific aspects of non-traditional research in law schools. In the lead article, *Non-Traditional Law-Related Studies and Legal Education*, the President of the Council on Law-Related Studies, Professor David F. Cavers of Harvard University, discusses the hurdles faced by a law teacher in pursuing non-traditional research.³ However, he is optimistic about probable future changes in law school curricula, foreseeing "a gradual multiplication of non-

²H. PACKER & T. EHRlich, *NEW DIRECTIONS IN LEGAL EDUCATION* (1973); Auerbach, *Enmity and Amity: Law Teachers and Practitioners, 1900-1922*, in *LAW IN AMERICAN HISTORY* 549 (D. Fleming & B. Bailyn ed. 1971); Stevens, *Law Schools and Law Students*, 59 *VA. L. REV.* 551 (1973); Stevens, *Two Cheers for 1870: The American Law School*, in *LAW IN AMERICAN HISTORY* 403 (D. Fleming & B. Bailyn ed. 1971); Stolz, *Clinical Experience in American Legal Education: Why has it Failed?*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* (E. Kitch ed., Univ. of Chicago Conf. Series No. 20, 1970).

³See also Cavers, "Non-Traditional" Research by Law Teachers: Returns From the Questionnaire of the Council on Law-Related Studies, 24 *J. LEGAL ED.* 534 (1972).

traditional law courses in which both instructors and students find themselves embarking on non-traditional law-related research." Professor Cavers believes that since clinical legal education has now achieved "academic acceptance to an impressive degree," the next logical step is to make the necessary adjustment in course requirements and class schedules to allow students full participation in non-traditional social research within the law school.

In the next essay, *Law School "Law" and Sociolegal Research*, Professor Geoffrey C. Hazard, Jr., of Yale University makes a timely contribution toward facilitating the integration of law and the social sciences.⁴ Professor Hazard focuses on one of the barriers to such integration, "the divergence of professional and intellectual responsibilities and aims as between law schools and departments of social science," and suggests that "a shift of emphasis in what law schools conceive themselves to be doing as professional schools might reduce the divergence of aims." By redefining and reconceptualizing the lawyer's role, he convincingly demonstrates that these divergences can be minimized.

Each of the four papers following Professor Hazard's essay addresses specific aspects of contemporary legal education.

Gordon A. Christenson, the Dean of the Washington College of Law at American University, provides a comprehensive framework within which to consider the role and function of law schools, and suggests that "a central function of legal education is to promote the possibility of principled action in the professional world." In this article, *Studying Law as the Possibility of Principled Action*, he proposes to combine "both intellectual and worldly perspectives" in law schools, thereby offering "to the new generation the possibility of action based on principle." Dean Christenson's comments on clinical legal education, especially his recommendation that the role of clinical education be extended "well beyond its practical origins," should be of special interest both to proponents and critics of such programs.

The lack of enthusiasm for professional responsibility programs in many law schools is noted by Professor Edward J. Kionka of Southern Illinois University in *Education for Professional Responsibility: The Buck Stops Here*. He finds this lack of enthusiasm especially disquieting when the alternatives—self-

⁴See also Hazard, *Interdisciplinary Courses and Programs in Law and Social Work: A Survey*, 6 FAMILY L.Q. 423 (1972).

education, education by example, and continuing legal education—are inadequate to instill a sense of professionalism and professional responsibility in the young lawyer. Professor Kionka makes a compelling case for teaching and emphasizing professional responsibility in law schools. This is not mere exhortation, for the author's careful analysis of the problem leads to concrete proposals to be considered and implemented.

The disparity between prevailing perceptions and the reality of the contemporary criminal justice system lead to the article *Discretionary Criminal Justice in Law School Education and Legal Scholarship* by Professor Harvey G. Friedman of the University of Detroit School of Law. He makes a strong plea for legal education in criminal procedure to incorporate the "reality of the informal disposition of criminal cases." Thus the emphasis of both legal research and law school instruction should shift from the prevalent model, that is a study of only the adversary system of criminal justice, to a model of discretionary criminal justice. Specific suggestions for reaching this objective are advanced, and the effects of changes in research and teaching upon the actual functioning of the criminal justice system are considered.

Professors Gerhard O. W. Mueller and Freda Adler, of New York University and the Medical College of Pennsylvania respectively, do not confine their remarks to legal education and legal scholars. In *National Manpower Mobilization for Criminal Justice in a Drug-Oriented Society* they call for "the creation of a vast national effort to deal with the criminal justice problems of today and those of tomorrow." They pose the question of what will be "the manpower needs, both quantitative and qualitative, of tomorrow's criminal justice system." In answering this question, the authors describe current developments in the criminal justice system, study and forecast trends, and inquire into the training efforts necessary to meet future manpower requirements. Their analysis is provocative and will hopefully be pursued further by legal scholars.

The final two papers in the symposium raise questions pertaining respectively to innovation in legal education and innovation in legal practice.

Professor Michael H. Cardozo, until recently the Executive Director of the Association of American Law Schools, considers the subject of progressive change in legal education within the

context of accreditation requirements⁵ in his article, *Innovation and Accreditation in Legal Education: Compatible or Polar?* While he finds the accreditation requirement to be the "most obvious potential impediment" to educational innovation, he believes that no bona fide innovation has ever been denied by either accrediting agency—the ABA or the AALS—when duly presented and defended. He reminds the reader that the standard of "a sound educational program," which both accrediting agencies insist that a law school meet in order for approval, is a flexible standard which invites rather than impedes innovation.

The final article, *Is Anybody There? Notes on Collective Practice*, offers a fascinating account of one experiment in alternative legal practice. The Santa Barbara Legal Collective, a group of lawyers and their associates motivated by a desire for social change and adequate legal representation for all, presents us with an inside look at their practice. They draw meager salaries, do their own secretarial work, and run an efficient law office while representing their clients. Both the organization of the collective and the daily workings of its members are discussed and, while the authors admit that they are "frankly propagandistic," this does not detract from the validity of the article's message—that methods of legal practice may be resilient and are not necessarily immune from non-traditional approaches.

This summary account of the comments that follow indicates that the authors do not purport to resolve all or even most of the current issues confronting legal educators and the legal profession. However, they bring into sharper focus some of the problems we face by identifying and clarifying the assumptions underlying these problems and offer many useful suggestions and recommendations. It seems to be a fair statement that law schools and the legal profession are not complacent; most are introspective and self-critical, sanguine and open-minded about criticism, and unafraid of change. Therein lies part of their strength and maturity. The experimentation with new ideas and the implementation of tested ones constitute a continuing process which provides them with both the flexibility and the opportunity to improve and grow. It is our hope that some of the ideas offered in the following pages will be considered, tested, and on their merits, eventually adopted.

⁵See also Cardozo, *Accreditation in Legal Education*, 49 CHI-KENT L. REV. 1 (1972).

