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Commentaries on Mr. Shea's Lecture

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useful. It's that that gives him the power and the capacity to deal with new issues, to wrestle with large issues. It is much more important, to my way of thinking, to have a good course in legal history than a course in labor law. I mean that it may be more important even for practicing labor law. You will be able to deal with the new things in a larger way, provided also that you have the capacity, you have the intelligence, you have the spirit and you have the right kind of general technical training. So I think that what is now at the heart of the present progressive movement in legal education is general education in a whole variety of ways that Frank Shea spoke of: legal history, general economic institutions. This is a movement back, away from the rather trade school ideas that we were very concerned about when I first came here to this law school about twenty years ago, and I think is an extremely useful movement. So you will see that really I agree with Frank Shea in every way.

MARK DEWOLFE HOWE*

Well, one thing in Jaffe's remarks is true. If I understood him correctly he said "Mr. Shea left a little hazy the how." That was truly an understatement. There is nothing more difficult, I think than commenting on another paper when the other paper really says the things you believe. I still have my feeling of respect for Dean Shea. I haven't lost the sense of awe, as apparently Mr. Jaffe has through the years. He didn't used to talk this way when the Dean was in the office; but I still feel responsibility to my superiors, to respect their views. But it is not only that feeling of obligation but in fact a sense that I do share his views that makes comment very hard. But let me see if perhaps by approaching one or two of the problems that he opened up I can say something that will at least give a different emphasis to some of our common attitudes.

I can start by discussing a problem to which Mr. Jaffe gave some attention: that is, the extent to which the law school can fairly ask of the colleges or perhaps of the high schools that they do more to prepare students for the law. This is certainly a problem which worries every law school—whether it should set some kind of requirements, perhaps in the area of government, perhaps in the area of history or perhaps English composition or any number of subjects which might be suggested. I am inclined to think, and I suspect that Mr. Shea may agree with me, that though it would be very desirable in some ways to prescribe a pre-legal course of study it really wouldn't in fact work. I believe this partly because of some of the reasons that Mr. Shea has emphasized in dealing with legal education. Just as legal education depends very largely on the teacher, rather than the subject, so I think the kind of pre-legal education which is going to count cannot be identified simply by names

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of courses in catalogs. The way in which you learn the sort of things which will be of significant value to you in law school is not by taking a course in English composition or taking another in English Constitutional History. It is by having studied a subject in a certain way and mastered it in a certain way. To look over credentials of an applicant and find that he has taken two courses in English composition, may mean a great deal if those were taken under a particular teacher and mean absolutely nothing if taken under some other teacher. So I think though we would all agree with Mr. Shea that it would be extremely desirable if the fundamental capacities of communication, by written or by spoken word, could be provided to the students, there really isn't any way in which we can be sure of this.

I do think, however, that there is some reason for confidence. The fact is that today's college graduates, and I think this is true throughout the country, come to law school far better trained, far more able to deal with law in a relatively mature way than they did in my day. When I compare the I.Q. I had as an undergraduate student to the I.Q. which I see in today's undergraduates, there is a world of difference. The seriousness with which students now begin their studies, certainly in the colleges and perhaps even before the colleges, has produced such an enormous difference that I think we can start with a good deal of confidence that though they may have deficiencies in certain areas they have the capacities now to develop real talent at the professional level. Accordingly, I'm not quite as despairing as I once was about the fundamental inadequacies of the equipment of students as they come to the law schools. The fact that we can't, as I see it at least, prescribe certain pre-legal studies as essential for the beginning of law study and that the medical schools can, seems to me to have some relevance with respect to our responsibilities in the law schools. After all, the medical student or the student who is going into science or theology or whatever it may be, does have to have a certain kind of fundamental training and a certain fundamental body of knowledge. I don't suppose the medical schools want to teach or can afford to teach the elementary courses in biology, let's say, or that the students who decide they want to become physicists can go to the graduate school without having done some physics before they get there. You do know with respect to the medical students and the scientific students or the philosophy students doing advanced work that there is a fundamental body of knowledge that is essential for such work. It is in fact, I think, still the case that there is no fundamental body of knowledge which is a prerequisite for law study. This fact makes it, I think, really impossible and in many senses undesirable for the law schools to prescribe a particular course of pre-legal study. What we want, it seems to me, are students who have already developed some enthusiasm and some intellectual gifts. Those gifts may be developed in mathematics, they may be developed in history, they may be developed in literature, philosophy or anything you name. The gifted college graduates, despite their lack of certain knowledge, may still

be extraordinarily promising and extraordinarily talented law students and lawyers. Now why is this? I take it that it is so because the fundamental interest of the lawyer, or certainly the fundamental interest of people who come to law school, is interest in human affairs; and when that is your interest, though there may be some value in studying sociology, or psychology, and some of the bodies of knowledge turning around the nature of man, this interest in human affairs, whether it takes the form of political enthusiasm, or problems of personal vitality, or the interrelationships of individuals, is not built upon knowledge. It is built upon something very different, and I find it hard to see how we can require as a pre-requisite of law study a body of knowledge with respect to human affairs. What can we teachers of law do with respect to a group of students, having I'm sure many impulses, some of them with high-minded interests in social welfare, others interested more in their own success, still others interested in political achievement, but all of them primarily concerned with human affairs, rather than the nature of the universe, the nature of beauty, or the nature of God? How can we in the law schools contribute something to men with this kind of interest in the complex relationships between human beings? I like to think that our first responsibility is to make them see that in dealing with human affairs a kind of discipline of mind and a kind of wisdom of attitude, coupled with knowledge about the past and about ideas in general, are essential. I don't know enough about what they do in business schools to speak with any authority, or to draw a contrast between their responsibility and ours, but I can't help thinking that the law schools play a fundamentally different role in making this interest a disciplined interest than is played by the business schools. I suppose the men who go to business schools also can be said to have this interest in human affairs. But our interest in human affairs happens, as a result of many circumstances, to be built into a professional framework—a framework which has philosophical, historical and theoretical roots. An understanding of these roots is of profound importance for students. Surely it is true, and I share Mr. Shea's views on this completely, that the law schools cannot with any effectiveness train in practical operations of the law. What we can do is give to men and women possessing this interest in human affairs a feeling of responsibility—a feeling that if you are going to deal effectively with human affairs, whether they're your own, whether they are the affairs of others, or whether they are the affairs of state, there is a kind of order which the mind has produced and must continue to produce in analyzing and adjusting these relationships. These you can't deal with by generality. This, I suppose, is one of the basic differences between what the law schools try to do in their analysis of human affairs and what is done, say, by the sociologists. Their task, I suppose, is generalization. They may deal with particulars to get to their generalization but they are searching for generalization. We, of course, have to deal with some generalizations, but on the whole as the common law system has developed, the lawyer's task has become that of dealing with par-

ticularities. This seems to me to be the basic virtue of our case method of instruction. We are forcing people who want to deal with things in a broad way to deal with them in a more specific way.

Mr. Jaffe has emphasized the new tendencies toward generalization in legal education. I agree with him that this tendency is very important but I think it would be a disastrous development in legal education if we lost our awareness that the primary task, and I don't mean only the first year task but the primary task throughout the whole law school course, is to deal with particular problems and not to deal with too many of the generalizations. It is surely a wise development in legal education that there is an infusion from time to time in the law school curriculum of the perspective or generalizing course which gives the student the opportunity to get out of particularities toward generalities; but I think it would be a very unhappy development if we lost our awareness of the need to discipline the minds of young men and women who are deeply interested in human affairs. Our students need to be persuaded that the best way to deal with human affairs is by the development of all those talents and those capacities which Mr. Shea has emphasized.

There are always the problems of method and these have probably taken too much of the academic community's attention. Should the teaching of law always be by the case method or can it be done by what is now called the problem method, a method in which you don't try to analyze what has happened and understand what has happened, but attempt to find ways of resolving problems that may arise in the future? I don't think it makes a great deal of difference which you do. I tend to believe that if one moves toward the problem method too much, one is tempted to make legal education, practical education. I think the student's tendency is to think that if you are dealing with problems rather than cases you are getting a somewhat more practical view of law. Perhaps you are, but there is some danger that the practical aspect that we cannot deal with successfully will dominate that method. Now if it is the fact that cases and problems should be the basis for legal education how should classrooms be conducted? I think there is probably too much tendency in legal education, perhaps more in the Harvard Law School than in other places, to assume that all legal education must be Socratic, that there is something wrong about lecturing in law school, that this is the great strength of legal education, that there is discussion. Surely this is a very important strength in legal education but I think there are some subjects in which this is the wrong method. I have had some experience in this in dealing with legal history. There is, I think, great difficulty in teaching legal history by a discussion method. It is to a very considerable extent the problem of imparting information, and I wonder whether you can very fruitfully discuss problems as to which students haven't yet acquired an adequate body of information. I think one of the dangers in legal education is the feeling that we are so different from other teachers, that we must always proceed toward truth by Socratic discussion. It is wasteful, in many circumstances, of time, and it may distort the educational process.

Mr. Jaffe and Mr. Shea have both asked another question: What should the law schools do about broadening their curriculum by the introduction of new subjects? I think I share their view that this is not a very important problem. Of course law teachers should be aware of the fact that subjects which used to be of great importance and of great significance are not so important today. I agree with Mr. Jaffe that the way you may get a great administrator of the Labor Relations Act is to find a Property teacher, but I also believe, though Mr. Jaffe seems to question this, that in a course in Labor Law you can do just as significant things toward generalization and broad understanding as you can in a course in Property or even in a course in Jurisprudence. The subject matter may be the jumping off place for that kind of analysis and generalization which we are seeking. I don't think, in other words, that merely because a subject has a broad name you have guaranteed generality, or that if you give your subject a narrow name you have denied the generalities of education. I suppose that a man teaching Taxation or Labor Law has the same opportunity in these materials to reveal some of the bigger problems. This would suggest that the problem of the law teacher is to keep abreast of the developments of law. Now I suppose the area of Administrative Law, of which Mr. Jaffe is a master, and of which I know little, was, in a sense, discovered at a certain stage in the history of legal education. There had always been Administrative Law but nobody recognized that there was such a thing and suddenly they realized that a subject worthy of separate study had been born. More than some of us may realize as we go on teaching the same old courses, new subject matters have been born of which we are unaware. We can go on teaching the old, familiar things forever without sufficient awareness that new things are happening in the world outside. To turn to the new things doesn't necessarily mean that you are turning to minute detail. You may, in the new things, find equally broad basis for instruction and understanding as you did in the old.

The problem which Mr. Shea and Dean Griswold on other occasions have spoken about—the problem, that is, of the responsibility of the law schools to develop institutes in which scholars, as distinguished from teachers, will give their energy to thought rather than instruction is not, perhaps, a subject which we are supposed to be discussing today. This is not, properly speaking a problem of legal education. It is a problem of what public service should be rendered by law schools. I should myself be unhappy if such institutes were established with a high degree of independence from the law school itself. I don't believe that the problem of instruction and the problem of research are as separable as they are sometimes supposed to be. I don't believe that one can, by going off to a room alone and thinking hard and reading intensively, get as far as he can by involving himself in the process of training others. This may not be true. It may be, that in some areas, pure scholarship is very fruitful. I am inclined to think that when one is dealing with human affairs, involvement in

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them, even if it is at the academic level through instruction of and talk with students, is an essential part of any process of development of new ideas and new answers. But I will be a little unhappy if the law schools in this country develop too many institutes for study of particular problems without tying them very closely into the instructional aspect of the law schools' work.

In the end, of course, the heart of the problem of legal education as of all problems of education, is the relationship between the teacher and the student. On committees and in conferences we may discuss legal education as if its problems were unrelated to teachers and to students. But in the end, the answer of education is to be found in the quality of men teaching and, as Mr. Jaffe has said, perhaps even more in the quality of men being taught. The only final assurance that legal education is going to inspire young men and women with a sense of the dignity of their profession is to give them an association with teachers who see things broadly and stimulate the eagerness of students to carry the enterprise of scholarship forward into their professional lives.

HON. PHILIP HALPERN*

Dean Hyman, distinguished colleagues, ladies and gentlemen: You may not believe it but it is true that I agree with all the speakers despite their contradictions and I also agree with Dean Hyman who thought there was no contradiction among the speakers. You know the story of Alice in Wonderland—you can believe contradictory things at the same time if you try hard enough. I find myself in agreement with most of what Dean Shea said in his excellent address. I also agree with the comments wittily presented by Dean Jaffe, when I got to the core of their substance, and I agree with Dean Howe, too. So I am going to start out, not by commenting on the paper at all but by commenting on the author. That is not within the privilege of fair comment under the law of libel and slander but since what I am about to say is, I think, not defamatory, I'm not concerned about that.

When Frank Shea came here in 1936, we affectionately called it the Harvard invasion. Dr. Alden and Bill Laidlaw and I were the surviving native population. I once discussed with a colleague of mine at the United Nations, Mr. Krishnaswami of India, the great achievements of India under the leadership of Great Britain, a fact which India has tended to overlook in the last decade or so. I mentioned the fact that the Indians had had no common language, that they couldn't even communicate with each other throughout India until they all acquired facility in English. He said that's true, but after all when the Romans conquered Britain, they built roads for Britain but they were still conquerors. Well, we may say that the conquerors of 1936 built some very fine roads for us. We have been traveling on them ever since. I

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