

1976

## Legal Education: The Classroom Experience

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### Recommended Citation

Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 *Notre Dame L.* 190 (1976-1977).

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## LEGAL EDUCATION: THE CLASSROOM EXPERIENCE\*

*Thomas L. Shaffer\*\* and Robert S. Redmount\*\*\**

Law students learn from what is in them, from what is directed at them, and from what is around them. The following is a study of an external dimension of the law-school learning experience—the classroom. Research strategy consisted of approaching the classroom phenomenon from two perspectives; what is presented and how students perceive it.

### I. The Classroom System

#### A. *Llewellyn's Analysis*

Law professors, as perhaps all professors, deal in information and commodities. In a professional setting, the information is described as vital but inadequate and partial; the commodities are franchise and responsibility. The nexus between information and commodities is characterized as a mystery which possessors are comfortable with but do not understand or will not describe.

It's all a bit like the rule against perpetuities in law school property classes. The teacher states the rule (an interest in property must vest or fail within lives in being and 21 years); he then says, in effect, that the rule doesn't mean anything, that it is deceptive and misleading, but that a lawyer learns how to use it, gets the hang of it, by dealing with cases in which the rule is applicable. One dare not desert the process the professor proposes to follow, but one is also warned not to expect understanding.

Karl Llewellyn, the late and illustrious legal educator, described the process in charming, traditional, calculated intimidation in his lectures for new law students.<sup>1</sup> It is instructive to look at what he said in terms of the ingredients of the official professor-student relationship in law school.

#### 1. The Riddle of Ineffective Information

The professor possesses, and will provide (in his own way) essential *information*, but he will never tell all he knows and what he does tell will not suffice to provide the *commodities* the student wants. The student cannot survive without the professor's information, but he cannot later complain that the information failed to give him what he wanted, because the professor warns him in advance that students cannot hope to get what they want in law classes. The professor is an indispensable oracle who is beyond review and immune to guarantee. He provides information which he believes useful (implying that it is only a trace of what he knows), and then carefully insists that this information is inadequate.

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\* This is a modified version of the eighth chapter of SHAFER & REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE* (Shepard's Inc., Division of McGraw-Hill 1977).

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1 See K. LLEWELLYN, *THE BRAMBLE BUSH* (1930).

"Without the information," Llewellyn said, "no understanding. Therefore the information must be insisted on. But it does not from the angle of professional use have any value in itself. One could make 20 courses which we have not, and no school has, and substitute them for 20 that we give, and no great difference would be made in grand utility."<sup>2</sup> (Llewellyn was a genius at challenging with the word "grand." The secret of the challenge was the impression that only he knew what "grand" meant. All the reader-listener could do, then, was dredge up his best and ask the professor, "Is that good enough to be 'grand'?" The answer, apparently, was negative.)

## 2. The Model of Confidence

The professor is a model of the appropriate way to deal with the riddle of ineffective information. At the very least this means he knows how to acquire information. The student can never know what the professor knows and the student will carry into his life as a lawyer a conviction that he will never know that much. But the professor teaches him, not all necessary information, but a way to obtain necessary information. Llewellyn says all of this and then closes the point by saying that law schools (*i.e.*, law professors) fail at teaching students how to look up the law. He tells students that the task is extracurricular.<sup>3</sup> Most law professors, with Llewellyn, think that legal bibliography is an important, tiresome, and unattractive course. No one wants to teach it; everyone believes it should be taught better than it is. The intended behavioral point here is that one way for the student to deal with the fact that he cannot possibly learn enough law is to regard the professor as a lawyer who has coped calmly with his own lack of information. He has to be seen as one who knows how to locate information, even if it is also a fact that neither he nor anyone else will teach students that skill and confidence—even if students have to be told, as they almost always are, that this is something they must learn on their own.

## 3. The Uncertain Insinuation of Professionalism

American legal education has always said or implied that its commodity is the graduate who can be a good lawyer, and that nothing but American legal education itself is capable of producing this commodity. (The principal motivation for our study is that no one has systematically looked at this process, even if one concedes its effectiveness.) The system works because the legal profession empowers it to work and empowers it as well to define its own criterion of success. It is the legal profession, acting through the courts, which licenses lawyers to practice. It is the legal profession, acting through its own national, voluntary professional organization, the American Bar Association, which accredits law schools (and graduates of unaccredited schools cannot, for the most part, be licensed to practice law). This system of license and sanction is conscious of a kind of officiality which does not lightly tolerate experimentation.

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<sup>2</sup> *Id.* at 93.

<sup>3</sup> *Id.* at 94.

The point here is neither the claim nor the fact that the criterion is self-referring; the task is to describe the system as it is described to beginning law students. That description is that their professionalism will come as a result of enduring the law-school process, but not as a result of any discrete part of the process. It will not come, for instance, as a result of assimilating information. Nor will it come as a result of taking courses (even though the visible substance of legal education is almost all in courses). Nor will it come as a result of the direct effect of modelling one's behavior on professors. Llewellyn is emphatic about courses:

A *whole* view of a subject comes *always* better from a book . . . there is no virtue in an instructor's "covering" the whole casebook—much more important things have commonly been left out of the casebook . . . if you have bartered your soul to the package theory of education, you will be in trouble: your "pounds" are nine ounces, your "dozens" run from seven down to three.<sup>4</sup>

What appears to be the heart of this communication is that if one works very hard the commodity will appear. "We do not teach," Llewellyn said, "you learn."<sup>5</sup> His point was not entirely obscure; he told the students they would learn how to synthesize cases, fashion winning arguments, counsel, plan, draft, and deal with administrative agencies. But he did not say how these results would come about. He may even have implied that he did not know how these results eventually come about.

#### 4. Student Concerns Are an Interference

Students want to "learn the law"; they are told that is impossible. They then decide that they wish to learn how to look up the law, and are told that it is a useful skill which they probably will have to learn from trial and error and poor instruction. They then decide they simply want to come out to be lawyers, and are told that will happen, somehow, not entirely through courses, but only if they work hard. It is not surprising that students then say such things as, "Will you teach me how to get a license—how to pass the bar examination?" And Llewellyn answered: "I think we can be sure that any man [sic] who does the work of the school and survives in it has skill enough to pass [the bar examinations] . . . what more he needs is information . . . as to . . . statutes . . . procedure . . . cases . . . and for these . . . there is the library."<sup>6</sup>

So much for vocational concern. Students also have moral and personal concern; but they are told, in a tradition now almost sacred, that they must put aside moral and personal concern. Llewellyn was unusually eloquent about it, and typical in his message: "The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking. . . ."<sup>7</sup> Any objective that a beginning law student may reasonably

<sup>4</sup> *Id.* at 95.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 101.

<sup>7</sup> *Id.*

articulate for himself is identified as dysfunctional or peripheral—except one, the desire to be a lawyer, and that central objective is identified by the professor as consequent on undifferentiated hard work.

### 5. Law Professors Are Not Dependable Models

The regimen which is presented to a law student, after discounting information, courses, and both selfish and altruistic concern, might simply boil down to a traditional master-servant principle of professional formation: Become like your masters. But that principle is implicitly and expressly denied in legal education. It is implicitly denied because law professors are a temple priesthood; most of them are not practicing law. And, although the legal profession sometimes condemns excessive distance between practitioners and professors it nonetheless insists on the separation. For example: (1) the Section on Legal Education of the American Bar Association, which is dominated by practitioners, and which accredits law schools, requires that the core of law-school instruction be provided by full-time professors and prefers that law schools be affiliated with universities. (2) Lawyers typically demonstrate a nostalgia and affection for their favorite teachers which is much like the regard the medieval man might have shown for wise, distant, and unworldly monks. Law professors are the Aquinases of the American legal profession.

The law-professor model for lawyers is also refused, explicitly, by the professors themselves. "There is no one of us who is not bad," Llewellyn said. "We are lopsided, very, each of us. And our teaching is even more lopsided. . . . We feel it well that you should be exposed to a series of lopsided men [sic]. . . . For you the balance, . . . the rounding out, . . . the building of a legal equipment better than that of any one of us."<sup>8</sup> The student is responsible for his own result, and the helping resource of models is denied to him as much as the helping resource of information, formation in courses, or the acceptance of his own deepest concern.

This is not, psychologically, as mysterious as it sounds. In a sense it is a system, in itself, of rigorous and traditional professionalism. It turns on a number of psychological elements which can be identified. The professional (here, the professor) is saying to the client (student): "You have to trust me and work hard and do as I say. If you do, it will come out all right, but I cannot possibly tell you how; it is too complicated for you to understand, and your own concern in the matter is beside the point." This communication resembles the communication between lawyers and clients in the practice of law or between physicians and patients. (Priests can no longer get away with it.) In law school, though, trust may tend to turn to consternation when the professor then teasingly (and, in the traditional model, sadistically) exploits the student's thinking to demonstrate that the student is not only ignorant but incompetent. It is, then, as if the professor is saying to the student: "You see, you really don't know how to do it. You cannot even think straight. But, still, if you will listen and follow me carefully, you will catch on somehow." And the student does catch on. In

8 *Id.* at 105.

the traditional model which Llewellyn sought to describe, he catches on to a sort of game. The game is called "thinking like a lawyer," understanding the law, and making it work.

### B. *Acclimation to the Legal Method*

Student reaction to the regimen is predictable at a verbal level. The principal student comment in the first semester of law school is that the work load is staggering; some students find the demands of law classes to be intellectually stimulating; others find these demands burdensome and react to them with anger or boredom. "Law school . . . is probably the most stimulating experience I have ever had," one student said. "But I still am not fond of the legal system, nor am I fond of the legal education system. I cannot believe that after four years of hard work in undergraduate school things could be so rough. Never in my life have I ever wanted C's."<sup>9</sup>

"I am not protesting studying 60 hours a week," another student said. "I am objecting to eating, drinking, and living the law. There is more to life than that." A classmate said he found that law school was never relaxing; he said he had been busy before, but never this busy "with one thing—the books. I suppose my real worry will come when it gets tedious or boring. Already, sometimes, I hate this stuff."

"I did not realize how much law school would become my life," a fourth student said. "It occupies nearly every hour of my day."

Another feels dehumanized: "He makes me out to be an ass. I resent the way he manhandles me. I even wonder whether he gets pleasure out of it, but I'm not going to let him get the best of me. I came here to become a lawyer."

Some students find their intellectual habits changing. They feel they are becoming more exacting: "When I was writing Christmas cards over vacation I told my old boss that law school had made me a better listener. This semester has taken some of the brashness out of me. I don't want to say spirit, but that might be what is missing. I do listen more carefully and I really think before I speak." Others worry that the work load may narrow their personalities, or that professional demands will be more than they can bear: "I have no doubts about my compassion, honesty, and dedication. Likewise, I have plenty of self-confidence about my capabilities. But the practice of law is such an awesome undertaking and the amount of knowledge that must be grasped and mastered is so great that my self-confidence is being shaken." Others are less fearful than confused. "Undergraduate school was more cozy. When I went to class, I found out what the right answer was. Here there isn't one. If you ask for one—they look at you like you've emanated some kind of obscenity."

"I feel as though I'm just floating around, unable to comprehend the meaning or significance of my classes. It's a pretty bad feeling. I need a new head."

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<sup>9</sup> Quotations from law students are from diaries prepared by law students at the University of Notre Dame Law School, or from oral interviews of students who participated in the project at Notre Dame Law School, at the Indiana University School of Law and at the Valparaiso University School of Law. Diary material is used with permission.

Another student said, "I find that I barely have time to catch my breath. It isn't all just study, either, although that is part of it. It's everything I'm not sure I understand completely."

### C. *Dependence and Resistance*

The immediate goal implicit among those who create this confusion in beginning law students is dependence. Dependence is a key factor in the system Llewellyn describes, and in the student's reaction to it. A critic might say that the goal is to re-map the student's mind, and the means to the goal is psychological subversion of the student's mind. The author of *The Paper Chase* obviously saw it that way.<sup>10</sup> Hart said of Kingsfield, "He's screwing around with my mind"; but our research indicates that Hart needn't have worried. Which isn't to say that dependence is not created or that it is any less real than it would be if the student's mind were being re-mapped. Students do find relief from work load, and from confusion, in trusting to the fact that the faculty knows what it is doing. One manifestation of this is a source of career confidence; the student feels confident that he will get through law school, receive his license to practice, and enter on his career; the faculty will take care of that for him, if he works hard. One student said he was amazed at how many of his classmates—after only a month or two of law school—felt this way. "I'm really impressed with how many of my friends know exactly what they want to do and where they want to be in ten years," he said.

The other side of an educational system which claims the ability to unhinge and confine minds is student resistance. The young graduate of the Harvard Law School, who took to the pages of the *New York Times* in June, 1975, to complain about his legal education, felt that emphasis on analytical training had cheated him of the knowledge he needed for the practice of law:

Substantive law is taught more as a by-product of the analytic training than as an end in itself. Harvard tries not to teach very specific substantive law, lest memorization interfere with the process of learning to reason and analyze legal problems. . . .

A legal methods course occupies a minor place in the first-year curriculum. It involves some writing and advocacy, and at least one library research exercise, but little explicit attention to drafting, interrogating, listening, or deciding what one needs to know. The teaching of these basic working skills of a lawyer is simply inadequate. . . .

Apart from the value of credentials and analytic training (most of which is complete by the end of a year or eighteen months) I wonder seriously if what I have gotten from Harvard Law School was worth \$8,000 and three years of my life. I have enjoyed it (which seems unusual), but that is not the issue.<sup>11</sup>

Much of third-year student comment on law school is in this dissenting mood. In fact, students may deprecate in themselves and other law students what they see as a product of their legal education. Consider, for example, the

<sup>10</sup> J. OSBORN, *THE PAPER CHASE* (1971).

<sup>11</sup> *N.Y. Times*, June 12, 1975, at 37, col. 1.

following comment: "Lawyers and law students are a rather obnoxious group. From the first day of law school they are taught to argue; they are taught to take issue with whatever another says. Soon they progress to a higher stage where they analyze and dissect everything that someone says. . . . I think that we do this not so much to find the truth, but just for the sake of arguing and pointing out frailties. . . ."

"I wonder," another third-year student said, "if the real problem between lawyer and client doesn't stem from a general lack of respect for human dignity. Look around you, more among students than among the faculty. Maybe I'm pessimistic, but I wonder how much regard many of my classmates will have for their clients. I fear that many lawyers use clients the way a professional golfer uses tees."

First-year students exhibit early versions of both of these strains—intellectual doubt and personal resistance. "The disappointing reality," one student said, after about a month in law school, "is that the insights are few compared to the oversights and blind spots. But saddest of all, I think, is that our vision is often just downright dulled or pedestrian." A number of students indicate that they plan their daily lives as defenses to being absorbed into the law-student community: "Sometimes I'm sincerely afraid of being inundated by law and the legal profession. I think that to be a really good lawyer, one should be able to feel the rhythm and flow of the law. But does this necessitate a full immersion? And, if so, what will this do to me as a person? Most of the lawyers I've met—in fact, all of the lawyers, except one very bright person—have tended to be quite dull as individuals, always talking shop, and generally closed to everything except the law and drinking. I've tried to combat this . . . by seeking friendships outside. . . ."

"I imagine John Ehrlichman got straight A's in law school and yet didn't learn the most important things about the responsible profession of law," another student said. "It's an outrageous, tragic situation. . . . Law students are pressured, goaded on to succeed, to 'go to the top.' It is this constant drive and ambition that can be dangerous I think, or advantageous, based on how strong a set of morals each person has."

The aura and mystery surrounding the classroom experience, as Llewellyn contemplated it, and its resulting accountabilities, are not as enigmatic as they may seem. At least they are not if one turns an ear to psychological explanation, and chooses to listen to it. In many respects, the traditional law-school teaching methodology (commonly called "Socratic") is not unfamiliar. It may be associated with military basic training, or with a kind of interrogation familiar to constabulary and intelligence operatives. First, the mentor creates consternation, if not confusion, by assuring the learner that he will learn and then the learner is rudely reminded of how little he understands. A subtle application of aggression creates pain and induces fear. (Students of behavioral conditioning will recognize the process.) However, the demeanor of the teacher (administrator of pain) is not entirely or even consistently negative; he blends into the process an offering of assurance and support. He mixes a benign manner which says that he seeks to help more than to hurt. He suggests and demonstrates that



the result will be worth the pain. The student is supposed to learn both to fear and to seek, but most of all he is supposed to become dependent upon the mentor; he is divested of his own mental and emotional bearings.

Given the reward system in this traditional classroom, the student becomes eager to please; he seeks to avoid the pain of humiliation and he seeks the pleasure of praise (and grades). His goals are survival and dignity; the only means to these lie in the approbation of the mentor. The urgency to survive makes other interests, feelings, and values remote if not irrelevant. In time, pride develops in becoming successful, and even an arrogance of intelligence and exclusivity develops. One not only learns to think like a lawyer, but one also learns what it is to feel like a lawyer, to be, perhaps, on the other side of a dependence relationship. The process is roughly what psychologists call "identification." Fierce pride and confidence are its characteristics, but among the effluvia are arrogance, combativeness, narrowness, and, deep within perhaps, some suppressed self-revulsion and self-doubt.

## II. Law School Courses

### A. *Data and Analysis*

Law-school instruction, based on our study of 20 classes in three law schools (Indianapolis, Notre Dame, and Valparaiso), and on impressions from several taped classes at a fourth (University of California, Los Angeles), is largely lecture. Classroom interaction is, in almost all classes, not as common as those who describe law teaching suppose. This seems to be the case whatever the subject, wherever the class is in curricular progression, and whether the school is small or large, urban or rural, public or private. Law teachers in this study tend not to use the probing "Socratic" style illustrated in the novel and movie *The Paper Chase* and promised in Karl Llewellyn's lectures. They use even less accepting-caring style which regards as relevant the student's interest and attitudes.

There are, within these general conclusions, some indicative differences. Tape recordings of 20 classes at our three basic schools, in such diverse subjects as torts, family law, taxation, and labor law, were analyzed by Professor Walter Doyle and his assistants in the Department of Graduate Studies in Education, University of Notre Dame. The analytical model they used is called the Flanders Interaction Analysis. It consists of analyzing small, equal time segments of classroom communication in terms of particular, possible categories of behavior. The categories include indirect teacher influence (acceptance of feelings and ideas, praise, encouragement); direct teacher influence (lecture, direction, criticism); student talk; and silence or confusion.

These analyses might be considered in terms of the student's progress through law school. The tradition has been that first-year law teachers (whose courses, in all three schools, and in most other schools, are required) tend to probe, question, and criticize more than to lecture; that second-year courses (which are usually elective but basic) tend more to the informational; and that third-year courses tend to be specialized and discursive. The 1971 Association

of American Law Schools curriculum study used the categories "basic," "extensive," and "intensive" to describe roughly the same theory of differences.<sup>12</sup> There are, when one looks at our data in this perspective, three categories of behavior, all expressed in percentages of class time: (1) the teacher talks, (2) there is no interaction (which may mean that students talk one at a time, as in seminar presentation); and the ratio of indirect (teacher accepts, praises, encourages) to direct (teacher lectures, directs, criticizes) teacher influence (I./I.D.).

## 1. Environment

The size and physical environment in a law school have some bearing on the way law classes are conducted, even without regard to whether size and environment produce differences in class size. The principal schools in our study are varied in size and environment. Notre Dame Law School is adjacent to a small city (South Bend, Indiana), is private, and has an enrollment of 400 students. Valparaiso University Law School is near a large metropolitan area (Chicago, and Lake County, Indiana), is private, and enrolls 300 students. Indianapolis Law School (a shorthand rendering of "Indiana University-Purdue University at Indianapolis Law School") enrolls about 1,000 students, in two divisions (day and night); it is in an urban environment (near downtown Indianapolis), and is tax-supported. Flanders figures in terms of law-school size offer some support for the view that large schools (which may or may not teach in large classes) may engender a more impersonal, less interactive learning atmosphere. However, the difference in law schools is not large. For the most part, law schools appear to be like one another, at least in terms of the way classes are conducted.

## 2. Course Subject Matter

Subject matter can bear, no doubt, on classroom interaction. We considered whether it made a difference that the course was one in which doctrine seems less important, and behavioral factors more important (family law), and whether differences appear between public-law subjects (constitutional law, labor law, environmental law, taxation) and private-law subjects (real property, wills and trusts, contracts, estate planning).

From listening to class tapes, one may conclude that family law classes (where elements of personal and social behavior appear ripe for discussion) engender more teacher restraint, more willingness to listen to the contribution of students. But there is still little evidence that discussion and exchange occur. Even in family-law classes, for 86 percent of the time there is no interaction among the people in the room. It appears that each participant makes his own small speech. Property classes, an endeavor in the private law area, tend to be concerned with "hard law" and to be more information-oriented. It appears

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<sup>12</sup> AALS PROCEEDINGS, *Training for the Public Professions of the Law*, part 1, § II (1971). This report is frequently referred to as the Carrington Report.

that teachers of property law are sterner and more demanding, as compared with family-law teachers, who appear to be benign and supportive.

### 3. Teaching Style

Law classes were also studied to determine what the teacher does when the teacher talks. We developed three categories of teacher style which we found to be implicit in the Flanders scoring system and used these categories for all three schools at all three levels of curricular progression and in all three areas of course subject matter. These are:

(1) The accepting style, in which the teacher takes his cue from student interest and development. He accepts feelings and ideas, encourages, and praises. Educational theory might associate this teaching style with John Dewey. Psychological theory would associate it with modern humanistic psychologists—Carl Rogers, for example.

(2) The probing style, which emphasizes interrogation and criticism, and which legal education has built up from the Langdell case method. The teacher asks questions, gives directions, criticizes, and justifies his own authority.

(3) The lecture, in which the teacher gives facts or opinions about content and procedure; expresses his own ideas; and asks rhetorical questions.

### 4. Lecture

“Lecture” is an expression (a euphemism sometimes) which means that the teacher talks. Lecture is characteristic of law classrooms at all levels of learning, though less so in the third year. There is little verbal exchange of thought or feeling between teacher and student, or among students. Law teachers direct and demand substantially more than they support and encourage. The Flanders figures for second-year classes suggest that the more a teacher feels he has much “ground to cover” (and law teachers often feel great pressure to cover the ground), the more he is likely to “lay it out” or to use mechanisms which emphasize information more than understanding.

Flanders analysis of taped classes supports the view that lecture is almost a universal teaching method in law school. It is used slightly less in family law classes and in third-year classes, but is dominant even there. The accepting style is not characteristic of law schools. Authority is more important and more prominent than inquiry. There is some slight progression toward probing and accepting styles as students progress through law school. Classes which deal with personal and social problems are somewhat more interactive than classes which deal with “hard law,” but the differences are slight and may merely suggest that subject matter which makes personal involvement obvious permits, or even facilitates, variations in teacher style. In any case, and in every case, the starting point is the lecture. The “Socratic method,” celebrated during the cocktail hours of thousands of bar-association meetings, if it ever was pervasive in legal education, has almost disappeared. First-year courses, which are thought to have been the main workshop of the probing law-school teaching style, tend,

more than any other courses in law school, to be taught by lecture. Teachers of beginning law students talk four-fifths of the time. Courses—first-year and others—which are concerned with large issues of public policy, and with matters of visible personal or social concern, where values are exposed and analysis is put to the test, tend less than other courses to be dominated by the teacher's words and thoughts; in those courses, the average teacher in our study talks only two-thirds of the time. (But some public-law teachers talk nine-tenths of the time.) Probing methods (and the prototypical probing methodology in law school is the "Socratic method") are not used much at all, but, when they are used, appear most frequently in third-year classes, in the smaller law schools, and in courses which also involve large amounts of student discussion and acceptance of student feelings.

Llewellyn, and even the June, 1975, Harvard law graduate we have quoted, predicted that the beginning law student could expect to be trained in exacting analysis. He might leave law school uninformed, but he would leave it "thinking like a lawyer." If the entering student also listened to lawyer war stories, or went to the movies, he might have expected exacting taskmasters who demand recitation from students and then subject the students to devastating, humiliating verbal autopsy. But none of this appears to happen. Socratic law teaching is a past that is no more (and, maybe—we are tempted to irreverence—never was). What students find instead are avalanches of information. Millions of printed and spoken words. Students do not find probing teachers; they find talking teachers. They do not find—and probably did not expect—a teaching style which consults learning theory or developmental psychology. That style might be expected to care about what the student thinks or, at least, what he says. Law teachers, however, do not often stop to listen.

If one assumes that classes in these schools were at one time "Socratic," that style appears to have been abandoned largely in favor of the rendition of information. American legal education in the Langdell era was thought to have turned (and probably did) from lecture and text to case study and analysis. Modern legal education has apparently gone back to what it was before the reform. Students, apparently, still read cases (appellate opinions), but only the teacher talks about them. Legal education now elects to present information, rather than engage in either intuitive learning (what students think and feel) or active learning (what students do). And it makes this choice without regard to either sequence or mutuality.

Classes tend to be more discursive as the student moves through law school. One can speculate that this occurs because of student demand; students in second- and third-year courses are less likely to endure boring class sessions and more likely to insist on an opportunity to exercise their own verbal aggression. Whether that is true or not, the progression is psychologically backwards; it does not meet the student's developmental needs. An advertent, need-centered program would give strongest support at the beginning of law school, when the student is most likely to suffer in silence, and would then move toward whatever is necessarily informational. In other words, there is, in legal education, little sense of human sharing, little indication of a collaborative effort among the people in-

volved to support the student in his important and fearful adventure.

Our findings confirm that law teachers adopt, in their work, personal styles of domination and persuasion. Those styles work, in the sense that they are repeated and that they increase, as Abraham's children once did. They tend not to work, though, in the sense that they produce little advertent effect on the personalities and perceptions of law students, who realize that law study has become a matter of assembling and organizing information.

Any school is a teaching-learning process. A humanistic school will tend to make learners of both teachers and students. (That is what we mean by "sharing.") In law school, the process separates teacher and learner. Even in terms of the "Socratic" assumptions which Llewellyn described, law school has deteriorated to a series of performances, mostly by the teacher (only occasionally by the learner). Beyond these theatricals, there seems to be a great deal of busy-work which involves searching out, organizing, and classifying information. These are insular mental processes; they are not a matter of processing what happens in the classroom or in the world outside, and they are therefore, for the most part, inconsequential. Students increase their refrain that law learning is a bore and a pain, to be endured for the sake of credentials and personal rewards. Since law is presented to them as a matter of grasping for control, not as a matter of concern, the rewards available to them become increasingly selfish.

In listening to tapes of classes in four law schools and in surveying the Flanders reading on classes in three of the four, an array of illustrations of the decline of "Socratic" teaching can be perceived.<sup>13</sup> The decline itself has perhaps been caused by two factors: a geometric increase in cognitive information, in all areas of the law, and student demand for pure, clear information, rather than exercises which are asserted to provide mental training. (There is some paradox in the fact that students demand clear information and then find the process of reaping what they demand to be boring, but our impression is that both are true.)

Some teachers appear to seek or cling to the classical, probing classroom style, despite pressures to get away from it. Some appear to attempt a "Socratic" style, but find it unsuccessful, perhaps because law students (even beginning law students) are less easily intimidated these days. Some use questions and answers as a formal way to move classes along, which means that discussion is a garnish to lecture. Some chat with students in a casual canter, which sometimes tends to humor, often humor by way of cynicism; this is basically a way to make lectures more palatable. Some, finally, simply lecture.<sup>14</sup>

### *B. Illustrative Classroom Selections*

Here are some examples, and some behavioral interpretations, of modern law-school classroom style and of the vestiges we found of the "Socratic method":

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<sup>13</sup> Tapes were made of classes at Notre Dame Law School, U.C.L.A. Law School, Valparaiso Law School, and the Indiana University School of Law at Indianapolis.

<sup>14</sup> We quote no lectures here, although we recorded many. We leave them out for the same reason we would prefer to see them left out of law classrooms.

### 1. A Traditional Class Discussion (in Trusts and Estates)

The professor begins the class, without fanfare, by asking a student to "give" a "case." (This means the student is asked to describe the litigation which culminated in an opinion from an appellate court, which opinion is reprinted in the student's textbook.) The student recites at length (three or four minutes), without interruption, and ends by enumerating several grounds, asserted in the litigation, for finding a will invalid:

P: None of those arguments were important, were they?

S: No.

P: Okay. Let's get to the important problem. What was the—

S: (Interrupting.) The important problem was whether the trust instrument could be incorporated into a will by reference.

The fact that the student interrupted here—and, in fact, interrupted one of the professor's questions—is an indication of how much the "Socratic method" has eroded. Can you imagine (if you've seen the movie) a student interrupting Professor Kingsfield?

P: What does that mean?

S: In other words, if—ah. (Long pause.)

P: What was the relationship between the two instruments: Were there two instruments, or was there just one piece of paper? (Pause.)

S: One instrument was a trust and the other was a will.

P: So there were two instruments?

S: Yes.

P: And did one make any reference to the other?

S: I think that the residuary clause made a reference to the trust—

P: The residuary clause meaning—

S: (Interrupting.) No, no—to the will. Yeah.

P: What was the reference it made?

S: Uh. It made a reference that she could add or change the term of the—

P: You said the reference was in the residuary clause. Did the residuary clause give her the power to change the terms of the trust? (Very long pause.) March, do you want to help him out? What did the residuary clause do?

March: (Answers. And the professor repeats the answer with approval, then pursues details of the case with March.)

The classical style permits this diversion to a second student, and would approve of the second student's being supported—as a way to keep the first student on his toes in the future. This professor deviated substantially, however, by not then returning to the first student with a new question. This deviation ill served the important objective of analytical training and the effective use of intimidation. This professor also deviated in allowing himself to become interested in the subject-matter discussion, often to the point of some enthusiasm. He tended to follow these enthusiastic exchanges with several minutes of uninterrupted explanation. For example:

P: Mr. Potter, the question is: Why the document incorporated by reference does not have to follow the wills statute.

Potter: I think, in a later case, it talks about when you have a will, a new will, or a codicil, what you are in fact doing is republishing everything that has gone before, that you are trying to incorporate. When, you know—

P: No, no, no, no. Let's not use the word "incorporate" here. I'd like you to talk about what kind of will—

Potter: (Interrupting.) So, in other words—

P: Do not use the word "incorporate."

Potter: So, in other words, if you have a will that you're making right now, and you have a past one that is invalid, because, maybe, you didn't have enough witnesses. . . . So, you have a new document.

P: (Shouting.) Why?

Potter: An old document plus a new one in the new one.

P: What does that sound like to you?

Potter: That sounds like—

P: March, what does that sound like to you?

March: You're retaking the, uh—

P: No, no.

Third student: It's integration!

P: Who says that? Where's the brave young man who said that? (Silence. The professor explains the doctrine of integration in an excited, argumentative tone.)

The principal hallmark of "Socratic" law teaching was that the professor was forbidden to answer questions; he was expected to lead the student to find the answer or, failing that, to grumbling frustration. Few modern teachers (at least in the four schools we considered) are able to endure the no-answer test, although some of them try:

S: I don't understand the difference between incorporation by reference and integration and—

P: So, that's what you're supposed to be finding out.

Post: Okay. You incorporate by reference, and therefore it is part of the will? I—

P: That's what Mr. Atkins (another student in the class) told me.

Post: You mean—

P: Mr. Atkins told me that, and everyone seemed to vote yes on that one.

Post: You mean. . . . (She explains her question.)

P: That's what Mr. Atkins told me. What do you think?

Post: Well, is Mr. Atkins right?

P: What do you think?

Post: Well, I would say that—

P: You mean he's not? Are you suggesting that you can incorporate by reference without integrating that into the will?

Atkins: Well, you can't.

P: (Laughs.) Miss Post says you can. (Laughter.)

Post: You mean that you can. . . . (Explains.)

P: That's what the court said in this case.

Post: (Begins to discuss case.)

P: The case says that?

Post: Well . . .

P: Can you give me the name of the case?

Post: It is—

P: No. I will give you the name of the case and then you can give me the facts. Turn the page. Let me see now, what page are we on? (Laughter.) (Identifies case and page.) And what did the court say there? (Very loudly.) The court said no incorporation by reference, didn't they?

Post: Yeah.

P: Yeah. Why did they say that, Miss Simon? Why did they say "no incorporation by reference"?

Simon: They said "inter vivos"; they said it is no good on its own.

P: (Pounding desk.) Why did they say no incorporation by reference?

Simon: Okay, okay. Answer my question! (Pause.) (A third student begins to answer.)

This was the only traditional "Socratic" class session among those we recorded and is, in that respect, atypical of those we recorded. There is here a good deal of interaction between teacher and student (very little among students). The teacher walks a thin line between encouraging the student to think (which he does with questions) and badgering the student. The difference is between support and intimidation; the device is brusque, abrupt, rapid-fire questions which could lend themselves to intimidation. The thinking which is encouraged seems to us to indoctrinate the student into a style or method of behavior. It aims at behavior more than it aims at information. It indoctrinates toward behavior more than it inspires curiosity or inquiry. The professor is in control here. He abrogates irrelevant or incorrect behavior. He punishes (or attempts to punish) inept or incorrect surmise by curtly moving his attention elsewhere. He reinforces certain emotional or intellectual emphasis in what students say, according to his own agenda for the development of the class. He wheels and deals while the student struggles to hold on. (Or, at least, some students, those who spoke up, struggled to hold on.) Until one becomes accustomed to this scene, and inured to it, as these students most likely have, the atmosphere may become tense. At best, given the students' relative level of acceptance of this teaching style, the process is entertaining. At worst, it becomes boring and painful and loses the appeal that might come from personal interest, inquiry, and challenge.

## 2. A Frustrated Socratic Discussion (Trusts and Estates)

The first tape indicated some attempt on the professor's part to maintain



“Socratic” intimidation of students. It was only slightly successful. In this tape, the students do the intimidating. The professor begins discussion by posing a hypothetical problem under the common-law rule against perpetuities:

P: . . . the gift is “then to his issue, per stirpes, then living.” Is this valid or void? Mr. Thompson?

Thompson: Uh. (Pause.) That’s valid.

P: That’s valid?

Thompson: Right.

P: Everybody agree? (Silence.)

Thompson: Oh. (Pause.) It’s invalid.

P: “Then living.” Invalid. Everybody agree? When will the class [group of property owners] close? Mr. Thompson?

Thompson: A’s death.

Black: (another student): A’s death.

P: A’s death. (Explains at length.) Now, it says “per stirpes.” If the son dies, and the widow dies, who takes the property? Mr. Morgan?

Morgan: I’m sorry. Would you repeat that?

P: (Explains again.) Who takes the property? (Silence.)

Morgan: I would say N-1 and N-2.

P: Of course!

P: Now, it’s just as if he said, “When the big tree falls, to Joe.” Now, you would agree, that’s void. Right? (Silence.)

P: When the big tree falls, to Joe. (Silence.)

P: This is the same thing. Except it’s to Joe; you’ve got a gift to a class. (Explains at length.)

Thompson: I’m not sure I understand. (Asks question about the widow problem, which was discussed ten minutes earlier.)

P: (Explains.) Now, when will the class close?

Thompson: When she can’t have any more children. (Silence.) When she’s dead?

P: (Ignores Thompson.) When will the class close? (Silence.)

P: Let’s go on to the next problem, then. Mr. Morgan. . . . (Explains.) Is that valid or void?

This class probably illustrates a common complaint among traditional law teachers—that students are not responsive in class discussion. Whether this is a common classroom interchange or not, it illustrates a kind of psychological cold war. The professor is overtly aggressive, and even overbearing, with no leavening (other than lecture) and no supportive technique. The students are persistently, and in concert, both passive and aggressive. The classroom struggle is for control; there is little disposition or effort to accommodate, on either side. The professor, intent on his subject (a subject which is as esoteric as anything can be), seems to lose track of his students; he seems not to know what they know or how they feel. His choices seem to be two—to give the students what they want (information) or to insist on his control by dismissing the class until the students are ready to join in the “Socratic” dialogue. Some law teachers, the

renowned Karl Llewellyn among them, are, in fable, said to have dismissed uncooperative classes, but it is a drastic tactic and, in our observation, rarely used. This teacher chose to give the information, which means that the students won the cold war. In our view, the tragedy was in the initial deployment from learning to psychological warfare.

### 3. An Attempt to Cope by Hiding the Ball (Labor Law Class)

Some teachers who experience the frustration of students who will not join in "Socratic" games believe that the way to restore the old order is to refuse to provide information. In itself, this device may tend to take up large amounts of time, during which students become frustrated. The theory is that they will begin to cooperate only when they perceive that there is no other way to learn. One way to short-circuit the loss of time is to give a mind-boggling exposition of skill, argument, and information. This labor-law teacher did that, at the beginning of his class, and then turned to a student:

P: Hawkins, would you lay out that case?

Hawkins: The workers went out on strike. . . . Apparently negotiations came to an impasse. The company offered non-strikers—

P: How would you view non-strikers?

Hawkins: Ones not engaged in the strike.

P: Are they replacements? (Pause.) Or former employees? (Long pause.) Or both?

Hawkins: Looks like both.

P: Okay (with inflection meaning "I hear," but not meaning "That's right").

\* \* \*

P: How would you, then, frame the issue in this case? What is the question to be answered?

Hawkins: Does the super-seniority system interfere with the workers' rights. . . ?

P: (Ignores Hawkins and asks same question of another student.)

This is a question game. The teacher can win it only if he asks all the questions and at the same time leaves no doubt that he both knows the answers and knows what to do with them. It is therefore essentially a system of training people how to persuade in a setting where the teacher creates for himself conditions in which he cannot help but persuade. From the same session:

Smith: Let's say you have a lock-out in a textile plant. . . . (Gives long example.) Would that be legal?

P: (Restates question and asks Jones.)

Jones: I think it would depend.

P: Is that so?

Brown: Depends on the impact the closing has.

P: (After pause.) Let's continue your question, Smith, in the light of the cases. Brown, what happened in the next case?

Not only does the teacher confine himself to questions, but he controls the time,

the place, the gavel, and the pace—and he keeps his own agenda hidden. His initial performance seems, though, to convince the students that the ball is worth searching for, and in this respect the “hidden ball” class differs from the relatively purer sort of “Socratic” dialogue.

The psychological line here is between stimulating curiosity and generating frustration. Students who feel, at the end of this class, that they have not found the ball, are left to gnash their teeth or to go to the library and try to find answers to their questions. The generation of frustration tends to a feeling in the student that he has been rejected, and to behavior which either rejects the teacher and his subject or avoids (ignores or denies) involvement. This professor communicates rejection to students and invites them to reject him. Students reply to the professor’s questions because his authority (or the grading system) requires response, but there appears to be little encouragement to seek or to learn. The lawyer behavior modelled here is arrogant and insensitive.

#### 4. Questions and Answers as Garnish (Trusts and Estates)

There are great pressures on law professors to lecture. This is particularly true in traditional property courses which remain required or coerced in most law curricula, but which have been reduced in time by half or more than half, to make way for modern public-law and clinical courses. Every teacher in the trusts and estates field, for example, feels a pressure to get through more material than can intelligently be covered in a discursive format. On the other hand, the model for law teachers is a Langdellian model; it turns on the skillful use of questions and answers. One compromise is to use questions and answers as mileposts in what is essentially a lecture:

P: Let’s suppose now that the trustee . . . refuses to go along with B. . . . What can B do?

S: Well, uh, he can go to equity and claim that the purposes of the trust are being defeated. . . .

P: Okay. He can go to court, and request of the court that it order termination of the trust and distribution of the assets. And that’s what was involved, both in the *Moxley* case and in *Adams v. Link*. The principles whereby the court will be guided in deciding whether or not to issue that order are. . . . (Explains at length, from textbook.) The trust could not be terminated. Right? (Pause.) In *Moxley*. (Pause.) (Silence.) Well, even under the first principle, the trust could not be terminated. How did the dissent in *Moxley* deal with that proposition? (Pause.) Anyone recall? (Pause.)

S: I think, uh, didn’t they talk about the European doctrine. . . ? (Explains his point.)

P: Right. That’s the English rule. . . . (Explains that rule.) How does the dissent deal with the first principle? (Student explains. The professor encourages him.)

S: Okay. What the dissent would do is. . . . (Explains.) Second point. . . . (Explains.) (He interrupts his explanation when a student wants to

ask a question, so that breaks occur either because the professor asks a question, as above, or a student wants to ask something. Students ask questions about half as often as the professor pauses to ask questions. The professor pursues student interest in areas where curiosity arises.)

This class became noisy at times, particularly when the professor was answering a question most other students were not interested in. The professor then tended to raise his voice. He also tended to give answers as asides, sometimes. In other words, he dealt with irrelevant questions by answering very briefly, or as an aside, but even so sometimes left the class inattentive. He moved to new subject areas by taking up new cases from the textbook.

P: . . . why not terminate the trust? Why not do what the Massachusetts court did in (the next case in the book)? What's that case all about? What happened here? (Pause.) Can anyone tell us?

S: Isn't that where all the beneficiaries made a settlement out of court, you know, to defeat the guy's intention. . . ?

P: Why did they do it, though? Simply to defeat his intention?

S: Well, it was so they could avoid a will contest.

P: To avoid a will contest. They entered into a contract. (Explains the Massachusetts case then answers student questions about that case, in much the manner students would have been pressed to answer teacher questions in a traditional "Socratic" class discussion.)

P: . . . to allow us to examine a little bit further—yes, sir?

S: Aren't the two cases indistinguishable?

P: Indistinguishable? In what sense?

S: I can see. . . . (Explains.) Are they inconsistent?

P: Are what cases inconsistent?

S: (Identifies three cases.)

P: They appear to me to be absolutely so. . . . (Explains at length.) Permit us to explore some other aspects. . . .

The professor who garnishes answers with questions, and sometimes questions with answers, is at least straightforward. The tenor of his questioning suggests that he is also supportive of students, if only to advance the discourse that he wishes to present. If, however, learning is doing then the student is not learning; he is only receiving. He is not learning how to think and, more importantly, how to correct faulty thinking. He is given the answer and perhaps some of the question but he must provide what goes in between. It is like two slices of bread without the ham.

## 5. Questions, Answers, and Banter

One factor in the erosion of "Socratic" teaching may have been that modern young law teachers are more interested in student popularity than Kingsfield's generation was. If this is plausible, it is a trend which is advanced by the admission, during the past five years of law-school application pressure, of exceptionally bright students, and by the growing use of student evaluation of courses and teachers. Administrators use these evaluation results in making decisions on

tenure, promotion, and salary. Whatever the reasons, a fairly consistent mood on all of our tapes was one of good-humored ease between teacher and students. The present tape (from the first session in an evidence class) illustrates this banter, and illustrates as well the occupational hazard a teacher runs in establishing it (cynicism):

P: Welcome to fun city. Let's start out with the ground rules, which should eliminate a fair number of you. (Grading; seating chart; examination—500 objective questions, open book, three hours.)

\* \* \*

P: I have placed on the board over there—in case you are interested in copying it down—all of the law of evidence which is relevant for a trial lawyer. Take that down, and if you understand what those terms are, you can practice trial law and you can forget about everything else. This course, rightly or wrongly, has been designed by the law school to teach a body of rules whose principal relevance is their utility to the bar examiners. . . . To some extent we will be discussing things which, if you asked me, "When will that situation arise?" my answer would be, "Probably never, except on the bar exam." (He goes on to explain that he often asks, on the final examination, what the color of the binding is on Wigmore's multi-volume evidence treatise. [Green.] His tone is globally sardonic—about judges, trial lawyers, law reformers, students, and law professors. Each is treated in order, each with sarcasm; all are made to appear venal. The professor's tone—with much student laughter—is joking but knowledgeable.)

\* \* \*

P: Okay, let's get started then. Consider the following hypothetical. . . . Witness W wishes to testify that the parents of X were not married. Can the grand jury use this evidence? Mr. Aldridge?

Aldridge: As an offhand answer, I would say probably not. . . .

P: Now, Aldridge, I picked on you for a reason. You and I have been through this before, and you and I know that we don't give offhand answers. Do we?

Aldridge: (Nervous laughter in the class.) No we don't. That is my memory. I do not have the relevant sections.

P: Now, what are the relevant sections? (Pause. Silence.) Where would you begin if you were about to answer this question? (Pause.) In the index—under "I"! (Laughter.) Is there anybody who has looked over these sections, who knows where we want to begin? Yes, sir.

Clayton: Section 300.

P: Section 300. What is your name, sir?

Clayton: Clayton.

P: Mr. Clayton, why would you begin with section 300?

There followed a skillful question-and-answer session aimed toward the proposition that the evidence code applies in certain situations—perhaps not including grand-jury hearings. The discussion illustrated that “Socratic” teaching technique works well within certain limited objectives—and this even in a class where banter is the rule and where students are not so intimidated. This class learned that it did not need to fear intimidation when it became clear, after a moment or two, that the professor and Aldridge knew each other and that Aldridge was willing to be ribbed. The limited objective in this question-and-answer session was that lawyers must learn to consult statutes when they are dealing with an area which is controlled by statute—as evidence, in this state, is.

The professor, in classic “Socratic” style, returned to Aldridge as soon as his first answer was obtained from Clayton and Clayton was suitably rewarded for his correct answer. (The reward, you will recall, is aimed not at Clayton, but at Aldridge.)

P: Okay. Aldridge, you’ve had an opportunity now to inspect Section 300 very carefully, thanks to Mr. Clayton’s rescue operation. Suppose you tell us now whether. . . . (Aldridge answers, is quizzed and insulted. Other students join in.)

P: . . . What are you reading Aldridge? . . . Well, keep working, you’ll make it. . . . It’s in the second paragraph. . . . (To another student.) I will come back to your point, but first I want to ask Aldridge—Aldridge, you understand it, you just don’t want to believe it.

\* \* \*

P: . . . I don’t want you to suppose. Do you know?

S: I would say “No, I don’t know.” Uh—

P: Mr. Eliot? You don’t have a book, either?

Eliot: No, I do.

P: Well, what are you doing with it? (Laughter.)

Eliot: I just started. I haven’t read it yet. (Laughter.)

P: Well, why don’t you crack open the cover and look at. . . . (Laughter.)

Eliot: It looks pretty discretionary.

P: What? What do you mean by “discretionary”? Do you mean the judge can do any goddamned thing he wants to?

Eliot: Right. (They pursue it. Eliot is wrong.)

P: Well, what is relevant evidence? (Pause.) Don’t stare at me!

Eliot: I can’t stare at this thing! (Laughter.) (They pursue the point, the professor with a tone which suffers fools impatiently, Eliot thumbing through the text.)

P: You move through this just like you move to the basket. (Laughter; applause.) You get there, but you just have to bull around a lot.

\* \* \*

P: . . . What’s a trial?

S: An adversary proceeding.

P: For what purpose?

S: To discover the truth. (Silence for about five seconds, then laughter.)

P: (After pause.) Who cares what the truth is? (Laughter.)

S: I care. (Loud laughter.)

P: Well, in your conversations with God, you can take those questions further. Brown, what's the purpose of a trial?

Students probably enjoy this teacher's classes, and attend them well, for somewhat the same reasons as they enjoy watching Don Rickles on television. It is difficult to evaluate the teaching style here without being stuffy. The classroom atmosphere is good-humored, unpompous, self-parodying. The professor's sense of fun keeps, for the most part, one pace ahead of insult and unseen injury to personality (his students' primarily, but also his own). It takes great skill to be ahead and not behind in this deadly funny, and sometimes deadly, sort of game. The risks are several: At times the game is diversion from matters for learning. The irreverence is humorous, and is rewarded by applause of one sort or another, but the values and ideals and ideas implicit in what the professor says may be trampled for the sake of the applause. Many of these values and ideals and ideas may be worthy of more sensitive treatment. Humor is a valuable tool to ease the pressures of learning, but it is also a way to parody the experience of learning, to make it unimportant, or even to destroy it.

## 6. Questions and Answers With Less Lecture and Without Threat or Cynicism

Several of these classes were conducted as unthreatening, uncynical conversations. Questions and answers remained prominent, but this category differs from the others in a number of respects: The teacher's style does not probe so much as it seeks student opinion or information (and shows interest in student answers). Students are not threatened with disapproval (or even examinations). The teacher lectures less, or appears to, and some of the information comes from students. In a first-year torts class in this category, the issue under discussion was defective manufacture:

P: (Posed policy questions very broadly, then took a show of hands on strict liability in defective products cases. He and three or four students then conversed about policy issues for five minutes and then he asked for case recitation):

S: . . . He's trying to say the defect wasn't there when it left the manufacturer. He's trying to pin it down. It's got to be there when it leaves. It's got to be made improperly. I suppose it would need testing, or whatever—

P: Yeah. You would need a metallurgical expert, wouldn't you? I think so. Alloy, or whatever it's called. All the tempering that goes into the product. Whatever it is that would be facts which indicate it was sold in the right manner, and with the best quality. All right. So, what the court is saying is that these were factual questions—that is, so far as the facts of this case were concerned. Right? Now, what's this three years?

- S: Well, that's just the time element. Then the use element, I think, would have to come in, too. If it's a mechanic who will pound on steel trays all day, that's one thing. If—like I said before—it is a man who has a basement workshop, it's another. And there's something about use. Like this. (Pounds on table.) Then that's an easier case right there.
- P: I assume that you have at one time or another used a hammer. . . . A hammer deteriorates over time and through usage, and therefore failure is more likely to occur through age and use. . . . How many of you knew that? (Counts hands.) Three or four. Now, the rest of you: Do you think that manufacturers of hammers should somehow warn buyers of hammers of the fact that they have a tendency to chip? What do you think about that, Mr. Eaton?
- Eaton: Well, first of all, I'm curious. Would that occur if you buy a hammer and just let it sit in your basement for five years?
- P: I don't understand the metallurgical aspects of this, either. I have the impression it's use and not just age. Or, rather, is this something where it deteriorates from age? Anybody here? Mr. Dumont?
- Dumont: No. I believe it comes about because of use.
- P: Use?
- Dumont: Yes.
- P: And there is evidence in the case—isn't there?—to the effect that he did use the hammer, although not in an extraordinary way. . . . (Conjectures on how this case would have come out had the facts been otherwise.)
- \* \* \*
- S: (A student asked about different kinds of use, and warnings. He asked whether a manufacturer of hammers is required to put a warning on his hammers that they will wear out after use. This called for a distinction between "normal wear and tear" and defects in manufacture, which could have been approached in question-and-answer format, or in criticism of the student's perception. But here the professor just answered the question.)
- S: (In another case.) What it boiled down to was that it should have had a warranty right on the product itself—not on the box, but on the product. And that means you just plain don't use it near heat. Now, in this case, you put a stamp on the hammer that says it wears out, after use—what does that tell you? Doesn't tell you anything.
- P: We're not talking—are we?—about normal wear and tear. That is not involved in this case. The court is, I suggest, leaving that open. . . . That's why I asked about time. . . . Assuming normal wear and tear, should a warning be given about normal wear and tear?



- S: Some manufacturers are now giving warnings about that on their hammers.
- P: Is that right?
- S: Yes.
- S: (A second student says he thinks that such a warning is appropriate. The professor asks him how the law should work out that sort of warning. Then he returns to the main point and asks a student to explain what a defect is, as seen by the courts in the cases under discussion.)
- \* \* \*
- S: (Gives a case involving liability for a defective gear-shift knob, in a 1949 automobile; suit was brought, apparently, in the late 1960's.)
- P: Do you think, back in 1949, with particular reference to the gear-shift knob, the manufacturer was thinking about safety? . . .
- S: No. I really don't think that was much of a factor back in 1949.
- P: Not much of a factor. You're right. Is there anything wrong, then, in imposing the kind of standards the court is talking about? . . .
- S: Well, it might seem a little unjust, you know. . . . The court is saying, though, that they have a duty not to put sharp objects around in their car when it is foreseeable that it's going to be in an accident.
- P: Well, that's a very basic question. When automobile manufacturers design cars, they have to make them as crashproof as possible. Can we analogize to seatbelts? (Explains this analogy, in terms of original availability and present legal requirements.) What is the primary consideration?
- S: Safety?
- P: Safety. Right. Now what was the primary consideration on gear-shift knobs in 1949. . . ? What it's going to be used for, and the color—
- S: (Interrupting.) The style and use, maybe—yeah.
- P: Is this an unusual kind of accident? I don't mean the collision, I mean somebody being impaled on a gear-shift lever. Huh?
- S: I really don't know. I know people get hurt by the steering shaft all of the time. A stick shift behind the steering wheel—I don't know.
- P: Below the steering wheel—yes. What about the burden on the manufacturer? . . .

Another instance is a first-year contracts class in which the teacher posed, to illustrate changes in agreements, the story of his disagreements with contractors who remodelled his home. This had the effect of posing a counseling, law-office focus for the subject. (He asked the students for advice.) It also made the climate of the class conversational, and underlined the professional status of the students as givers of advice. This, finally, had the effect of heightening interest

in the exposition of doctrine, and gave a collaborative cast to the discussion:

S: Maybe wooden screens conform just as well as aluminum screens. . . . Maybe your idea that there are supposed aluminum screens is not reasonable.

P: How about that? Let's have a brief look at that page of the contract. The contract on its face talks about. . . . (Professor and students examine the language of the contract.) Do you have any remedies to repair that problem in the contract—which might affect your rights now? What does that suggest—that kind of situation. Yes? Fred?

Fred: Reformation.

P: Reformation! In the second case in this section—the Holmes opinion—Holmes didn't permit waiver of a condition in an insurance policy, but he did suggest that if a different contract had in fact been made, the writing could be reformed. . . . (Professor explains this idea briefly.) So that might help. Yes?

S: I was just wondering. You say that the company knew that the man wanted aluminum screens, but failed to say that Excel Screens were not aluminum?

P: You can assume there will be a conflict of testimony on that point.

S: I was going to say this might be something like the Jeremiah case, where there was unilateral mistake. . . . (He explains the parallel.)

P: All right. That's a possible argument. One could talk about. . . . (Tries the idea out. He then surveys the possibilities which have been discussed.) All right. Where does that leave us? . . . Is there anything we want our client to start doing? (Explains that contract rights may be lost through inaction.) What is it that we might want to tell our client? (Class then discussed various steps client should take by way of revoking an unsatisfactory contract.)

S: Let's go back. If you're attorney for this man, let's find out all you're going to do for him.

P: Yeah. That's fine.

S: Yeah. Let's just start from scratch. (Student then analyzes the agreement in some detail, asks questions about it, and outlines a procedure for dealing with the client and with the contractors. The professor contributes to this performance; his mood is enthusiastic. Murmurs from the class indicate a high level of interest among other students.) I think we're going to have to separate this contract from the original contract, by saying that the written contract is the one we are going to go by—

P: Is that the way you want to go on it?

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P: (After summarizing discussion thus far.) Well, let's see, now someone wanted to separate here. John, you were the one who wanted to separate. Let's go back to that siding.

John: First of all, I want to know about the siding.

P: The siding's on. It looks nice. I'm happy with it.

John: Well, what's the decision?

P: We haven't come to a decision. We're still struggling with a decision. I thought I'd come back to you; you sounded so decisive. I thought, "Maybe we can wrap this up."

This was a vivid discussion, involving several students, with murmurs indicating students in the class were also talking to one another. When the end of the class period came, the professor said: "John, let's start tomorrow with your idea. Let's give about five minutes of advice to this man."

One advantage this conversational, relatively supportive style has is that personal feelings of students, and questions of value, tend not to be ignored or criticized. In an example from a family-law class, the students were discussing a hypothetical case in which a young lawyer is asked by an elder in the firm to advise a father who is seeking the custody of his child and who wishes to take the child to another state. The father seems to the lawyer unfit; he needs legal advice within two hours; and he could probably avoid sanction if he simply took the child out of the state. The students are worried about conflicting personal demands on them:

McGee: You don't have a whole lot of choice in the matter. Mr. Jones walks in and turns out to be the sort of person who looks like he might consume small children for pleasure. The problem is being able to say, "Gee, you know, I really don't want to take your case. Maybe you want to get somebody else." Although under the fact-pattern presented, it doesn't seem to be that significant a problem, it puts you in sort of a bind.

P: But you think you have to do it, huh? You could call another lawyer—and go out and play golf for a couple of hours—and say "You handle this matter, for a person you have never met."

McGee: One of the disadvantages of being a junior partner, or not even that, a lackey.

P: Anybody in the class who thinks he'd decline to take the case, in the way that it is presented?

Meyer: Well, we do have a pretty good idea of what the situation is, even if we have a messy individual. . . . I think you could certainly feel that you could in conscience advise him.

P: (Tone suggests desire for understanding of what student said.) All he's asking you to do during this two-hour period is to read the papers and do some research, huh? And there would not be anything out of the way in your doing those two things.

Brown: Ideally, you may have some objections—but, unless you have another job lined up—technically speaking, I would probably go ahead and do it. Maybe it's not correct, and maybe I wouldn't get as good a rating in professional responsibility, but there're the practical problems of working within a firm like that. It's nice to be an idealist, but right now I would rather eat.

Timmons: Well, to put it bluntly—You do the research, and the guy walks in in two hours—You're caught in this bind of, "Well, gee, I'm going to turn a kid over to this," or, "Gee, I'm going to lose my job." You give him legal advice, and maybe you don't give him very good legal advice. (Laughter.) Well, let's put it this way: You advise him of what are his minimal legal rights; you don't necessarily wax eloquent. . . . You don't necessarily tell him he could kidnap the kid and probably get away with it.

Reynolds: Yes—some sort of a comment. (To Timmons.) Who elected you judge and jury? I mean—If you don't want to handle the case, that's one thing. But to give the guy shoddy legal advice, to obtain a legal result you think is fair—

Timmons: I didn't say "shoddy legal advice."

Reynolds: I'm sorry, that's the purport of your comment. (Silence.)

P: Well, I think we can disagree on that issue, but I do think it's worth raising. . . . If a matter is dumped on you, as this matter was, you might well be justified in refusing. . . .

These low-pressure teaching styles seem to us to have a number of advantages which neither the probing ("Socratic") style nor the lecture have. The professor who generates and tolerates student ideas and feelings, in this casual question-and-answer approach, contributes to an accepting climate in his classroom. He accepts the students; they accept him and one another. The level of tension is not artificially elevated, but exists as an appropriate and effective tension for learning; it is sustained in the exchange of ideas and in an intrinsic interest in learning what is to be learned. Students are encouraged to inquire and to risk the exploration of their own feelings and attitudes. They are not being attacked; a conjoining and cooperative learning effort then seems to occur spontaneously. In all likelihood, this tenor in the classroom, which is not devoid of tension, is comfortable and spontaneous for all participants (and, to that extent, the teacher is also a learner). The professor is liberated by this comfort and by the capable and interested students who share it with him; he becomes free to turn his conscious attention to strategies for organizing the content of the course, using the materials he has assembled for study and sequencing topics, reinforcement of student interest, and feedback.

## 7. Less Tradition

The classes described above illustrate, for the most part, attempts to hold on to traditional question-and-answer teaching style. There are a number of examples on our tapes of teachers who appear to have rejected questions and answers and to have adopted devices in class to keep questions and answers from reasserting themselves through students. Several teachers lectured in such imperious tones that students were unwilling even to attempt questions. A number of classes were conducted in a seminar format, in which one or two students made virtually uninterrupted presentations. Some other notable moments on our tapes:

In one advanced estate-planning class, the professor called for student questions, once, about 15 minutes into the class hour, and then quickly picked up his lecture before any student could have thought about the opening and used it. In an advanced (and small) public-law class, the professor spent more than half the class laying down complex ground rules for a game he wanted the students to play; told a joke; and completed the hour with a lecture.

Some teachers, notably in a federal taxation class which considered methods of depreciation, directed their efforts to offering help to students who were expected to gather their information from the text. In the taxation class, the teacher went over comparative charts on depreciation, which were in the text. A student complained that he could not understand the charts in the text. The teacher then constructed new comparative charts, and explained them, on the blackboard. He was apparently prepared to do this, but willing to do so only if need arose or students asked for help. There are examples here of several other means of offering informational help (as opposed, for a few alternatives, to probing understanding, or relating information, or seeking to involve students in activity). Help has a number of versions; in the taxation class, the teacher sought demonstration of understanding and provided assistance where it appeared necessary. In a constitutional-law class, the teacher reviewed the text material and then asked, in effect, if his review had reminded students of subjects on which they needed assistance. In most of the lecture classes teachers rarely sought anything from students but indicated willingness to respond to questions when they were asked. Most of these methods appear to encourage and support students, rather than to criticize or test them. They are, in other words, aimed at clarification of information, rather than at analytical training or at self-learning by students. They are in effect alternative methods for the lecture. It is important to ask in this context: Help for what? Frequent references to final examinations, bar examinations, "holdings" of cases, and black-letter principles,<sup>15</sup> convince us that "help"—in the professorial mind and probably the student mind as well—is often directed not at law practice but at examinations. (There are exceptions, dictated both by the educational aims of the teacher and by the nature of the subject matter. One of the trusts and estates teachers, for example, related doctrine to the management of files, in a law office, in which will forms are organized; he also related death-tax questions to client protection, more than to doctrine in the law. Seminar presentations in family law—evidence, perhaps, of student preferences on the point—often covered practice considerations rather than the doctrinal points one would expect on bar examinations.) One can conjecture from this that examinations are used to compel attention to what would otherwise be relatively uninteresting classroom content.

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<sup>15</sup> The "holding" of a case is a recondite analytical concept which involves identifying the judicial *decision*. "Black-letter" principles are short statements of legal doctrine; the term comes from abstract section headings in texts and legal encyclopedias.

### III. Conclusion

Professor Louis M. Brown has pointed out that the classroom is a laboratory.<sup>16</sup> And so it is, or so it should be. It is a laboratory for the testing of virtue, and therefore a place where ethical problems (and moral feelings about them) can be discerned and explored. It is a laboratory for the mind, a safe place where thought can be stimulated and tested; it should in that respect be safe for intuitive thinking as well as logical thinking—safe, that is, for the spontaneous and the immediate. It is also a laboratory for human relations, a place where, by demonstration and by hypothesis, the tenor and skill for dealing with human beings are relevant subjects for explication and testing. The value of the laboratory metaphor is that classrooms are opportunities for learning by doing; opportunities for a teacher to discover all of the ways he can help students learn; opportunities for students to try, to err, and to discover, without fear of savagery or humiliation.

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16 Brown, *Recent Trends in U.S. Legal Education*, 26 J. LEGAL ED. 283 (1974).