

# Legal Education:

# McDonald's or Antoinettes?

E. Gordon Gee, Assistant Dean

As we enter the decade of the 80's it is time for legal educators and members of the legal profession to ask the question: "Should legal education take a new direction?" I believe that the answer to that question is yes. The training of lawyers as we know it in this country can be traced to the appointment of Christopher Columbus Langdell as Dean of the Harvard Law School in 1870. At a time when educational standards were lax and it was still common to get a legal education by working in a lawyer's office, Harvard, under the direction of Langdell began the trend toward academically based legal education.

The case method of instruction in law school was Langdell's principal academic legacy. While requiring fledgling lawyers to study cases can hardly be said to be revolutionary, the notion of grouping cases together in a book devoted to a particular area of law was a great innovation at the time. Once established, the case book method became the predominant pedagogical tool of law teachers. There have been notable attempts to break away from the case book approach, but even today it remains the almost universal method of instruction during the first year of law school and in many, if not most, second and third year courses. In effect, legal education has become the McDonald's of professional training. We have found a formula which apparently works, and with rigid "quality control"

through the auspices of the American Bar Association, we put out a fairly decent "hamburger." And not unlike McDonald's, the product of legal education is uniform, unimaginative, and mass-produced. Lest anyone be upset let me hasten to add that this state of affairs

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is not due to the product, but due to the process. It is now 110 years since Langdell went to Harvard. The major innovations in legal education in that period of time have been the introduction of seminars, some problem oriented courses, and teaching tools which are now called "Cases and Materials on \_\_\_\_\_" rather than merely "Cases on \_\_\_\_\_". Other than these refinements, the legal education process has changed very little during the

past century. One could argue that once a successful formula is found that formula should never be changed. Yet, such complacency is hollow reasoning. A review of our sister professions of medicine, business, and accountancy show tremendous energy in experimentation and development of new and exciting pedagogical techniques — all which have contributed to the betterment of those professions. Indeed, Langdell's legacy has apparently become a chain of bondage, rather than a tool of excellence.

Up to this point legal education and the training of lawyers has survived, even prospered, despite the lack of instructional imagination in the law schools. This will soon end. For one reason the "salad days" of legal education are over. The enormous volume of applications for available spaces in law schools will soon diminish, meaning that the consumer will have a say. Yet another reason can be found in a recent newspaper article where the writer stated: "Not too long ago I printed a survey showing that in terms of trust, the American people ranked lawyers right up there with tarantulas. I immediately got angry letters complaining that the survey had insulted the tarantulas." This escalating distrust of the legal profession will exert additional pressures on the law schools for improved training methods. Finally, the perceived glut, whether true or not, of lawyers on the job market will require us to rethink what the role of a lawyer in

society is and should be.

This brings me to the second part of the analogy found in the title to this small essay. *I believe that in order for law schools to meet the challenges of the 80's we must move from the time honored "hamburger stand" approach and attempt to become an educational Antoines.* As you may remember, Antoines, a great New Orleans restaurant, offers to its customers on any given day an enormous selection of entrees, all cooked to perfection. Likewise, law schools must expand their vision in terms

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of curricular offerings and pedagogical processes. Let me commit further heresy: we must stop thinking of law schools as places where only those who want to practice law in the most traditional sense come, but rather as a place where people who want to receive training which will be helpful in pursuing a host of careers can find refuge. In a very real sense I believe that the lawyer is the last of the renaissance men. We must revive that notion by training people to be practicing lawyers, government officials, teachers, administrators, and businessmen. To accomplish that goal will require a major restructuring of the legal education process. We will have to substantially improve the student/faculty ratio as is presently the norm in most law schools. *We will have to take greater advantage of the rich resources of the University community rather than maintaining the typical law school "bastion mentality".* We will have to recognize the value of other disciplines and make use of those disciplines in improving the training of students who have chosen to come to law school. Finally, we will have to broaden our view of what makes a

good law student, thus creating a more heterogenous body where people with many interests can be served. And, we

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will have to do all this without sacrificing educational quality.

This new direction for legal education will not be easy to set in motion. Institutions of higher education are generally going through a period of financial

retrenchment. The likelihood of them being willing to throw more money into what has, up to now, been one of the more profitable units within the university is problematical. The status quo orientation and pressures of a practicing bar will continue to exert a strong influence on law schools to continue along their traditional paths. Indeed, many members of the practicing bar find great fault with law schools as already being too "theoretical" and not providing enough "practical training" for students. There may be resistance from law faculty who feel comfortable with the present state of legal education and will, therefore, not want to restructure their comfortable living quarters. And, no doubt there will be some student resistance because they may view this as one more attempt by the law schools to raise their tuition and force faculty views on them

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without commensurate cost benefits and input. Yet, as wrenching and difficult as it will be to redirect the process of legal education, it must be done for survival sake.

Up to this point I have spoken about legal education in general. I would not want to stop without mentioning how this proposal affects the J. Reuben Clark Law School. First, I have had an opportunity to visit a number of law schools during the past three years, and that experience has shown that our school is in the forefront of many innovations taking place in legal education. This is true because we have a creative faculty who are receptive to new ideas and who are constantly trying to improve the teaching

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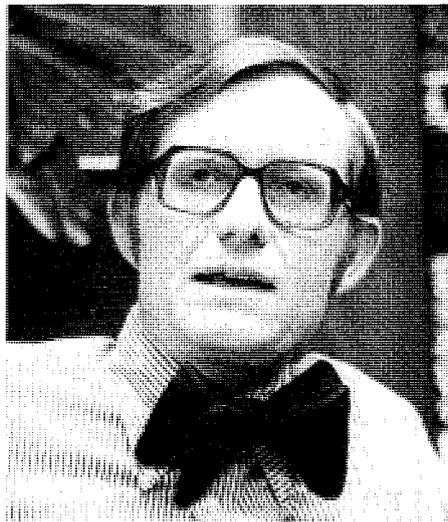
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process. Secondly, we are in a unique position because we carry with us very little traditional baggage. This is a new law school, and we are creating our own traditions which gives us a chance to make major changes before patterns be-

come too set. Next, we have unique and supportive students who, with a modicum of complaining, submit themselves to experimentation. Finally, we are situated in a university which is not hostile towards its professional schools. The support of the university administration, the Board of Trustees, and other faculties within the University will continue to give aid and comfort as we grope our way toward a meaningful restructuring of legal education at Brigham Young University.

Legal education in this country is unquestionably at a cross roads. One road leads toward the siren song of practical training and its concomitant trade school approach. The other will hopefully provide us with law graduates who are intellectually curious people with a broad perspective on the possibilities and limits of human life in organized communities. Big Mac or Cordon Bleu?



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