Some Further Reflections on the Problem of Adequacy of Trial Counsel

Warren E. Burger

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Some Further Reflections on the Problem of Adequacy of Trial Counsel

Cover Page Footnote
Chief Justice of the United States. I am indebted to Carl Daniel Motsinger and Jeffrey B. Morris for undertaking to synthesize informal lectures, articles, and speeches made by me over nearly two decades, for researching recent developments, organizing extensive materials, and offering their own analyses.

This article is available in Fordham Law Review: https://ir.lawnet.fordham.edu/flr/vol49/iss1/7
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Dedication

On this, the Seventy-Fifth Anniversary of the Fordham University School of Law, it is fitting that we dedicate this Anniversary Issue of the Fordham Law Review to a man whose contribution to this school and this Law Review is unsurpassed. And so,

THE BOARD OF EDITORS

OF THE

FORDHAM LAW REVIEW

Dedicates The Seventy-Fifth Anniversary Issue
to

LEONARD F. MANNING

ALPIN J. CAMERON PROFESSOR OF LAW

FORDHAM UNIVERSITY
LEONARD F. MANNING—A TRIBUTE

"Florello!" was not yet a musical. The man himself was masquerading as the mayor of the City of New York. With consummate grace a youthful Joe DiMaggio was roaming center-field for the New York Yankees and Yankee domination left baseball a little monotonous. In entertainment radio was king—sparkled by the occasional stroll of Jack Benny and Mary Livingstone down Allen's Alley. But radio's reign was not long to last. Over in the Flushing meadows, in the shadow of the Trylon and the Perisphere, visitors looked with disbelief upon a boxed picture called television. Though the hobnail boot of the Nazi had already been heard on the cobblestones of Prague and swastika tanks were rumbling into Poland, the world was young then and 'all the trees were green.'

At this juncture in time—September of 1939—Professor Manning came to Fordham Law School which was located at the Woolworth Building. It was a time of uncertainty. The Great Depression was not yet over and as indicated above the drums of war could be heard in Europe. But Len, we can be sure, was his usual cheerful self. At Fordham, he was nurtured by great teachers—George Bacon, Maurice Wormser, John Blake, and Ignatius Wilkinson—and challenged by great students including Bill (now Judge) Mulligan and, if I may be permitted a personal note, the Calamari boys, Andy and Joe. But Len led the class as he had at St. Peters where the Jesuits had helped him acquire a love of poetry, beauty, and Gilbert and Sullivan.

After two years at Fordham, Professor Manning answered the call of his country, served in the Navy, and was discharged as an Ensign. It was at this time that he met his lovely and charming wife to be, Ceil Gonnella. Len still adores her and to this day candidly admits "that marrying Ceil was the smartest move I ever made." Their union has been blessed with four wonderful children—Leo, John, Stephen, and Robert.

Following his military service, Professor Manning made the most serious mistake of his life. He returned to law school not at Fordham but at Harvard, where he graduated cum laude in 1947. Despite this indiscretion he became an associate in the firm of Chadbourne, Wallace, Parke & Whiteside. Within a year Dean Wilkinson, who was an astute judge of character and ability, called him to a teaching career.

And what a career it has been! His students were immediately impressed by his intellectual prowess, his unexcelled powers of analysis, his ability to convey difficult concepts, his rare gifts for lucid and

* Taken from Professor Manning's Tribute to William Hughes Mulligan, 39 Fordham L. Rev. vi, vi (1970).
forceful utterance, and his mastery of the subjects that he taught. The students also discovered that Professor Manning had a most challenging teaching method. He skillfully developed the problem in all of its aspects and was quick to point out inconsistencies. He never offered facile solutions. Yet, at the end of a course, he was always able to mold the material into a coherent, logical, and unified whole.

Professor Manning's accomplishments have not been limited to the classroom. He has written many law review articles and is presently writing a book in the area of Church and State, a field in which he is a recognized expert. This is attested to not only by his book and articles but also by his appearance in many important cases and a number of debates. He is a recognized expert not only in Constitutional Law but in Conflicts of Law.

Professor Manning's greatest achievement, however, has resulted from his selfless dedication to his job as Faculty Advisor to the *Fordham Law Review*. His appointment to this position was Fordham's good fortune because of his extensive knowledge of the law and his unique, unsurpassed ability to coach students in the art of writing with style. A sample of his literary talent appears at the beginning of this tribute. With these great talents, Professor Manning has singlehandedly taken the *Fordham Law Review* from the relatively unknown publication it was twenty-seven years ago and turned it into the nationally recognized journal it is today.

But all of his accomplishments pale in the face of his nobility of character and spirit. Professor Manning is an innately modest man, even shy. Although slightly built, he is a man of great courage. Generous to a fault, he loves everyone with whom he comes into contact. I do not believe that the man has ever harbored an evil or selfish thought. He is a friend *sans pareil*.

In appreciation of Professor Manning's devoted service in a distinguished career as a great lawyer, teacher, author, gentleman, and friend, this issue of the *Law Review* is dedicated to him. We wish him continued success and many more years of happy association with the Law School.

*John D. Calamari*  
*Wilkinson Professor of Law*  
*Fordham University*
LEONARD F. MANNING—FORDHAM LAW REVIEW'S GUIDING LIGHT

In June 1954, the name Leonard F. Manning first appeared under the heading “Faculty Advisor” on the Fordham Law Review masthead. At that time, only three issues per year were published, and only 393 pages were printed in Volume 23. When Professor Manning joined the Law Review effort, the Review’s primary goal was to teach students, not to influence legal scholarship. This was obvious from the mediocre citation records of Volume 23 and its predecessors.

I was not yet born when Professor Manning became the Law Review’s Faculty Advisor. Knowing him now, however, I can just imagine the vitality, the vigor, and the hope that he brought to the Fordham Law Review. He gave the Review new life. Dramatic changes were made the year after his appointment as Faculty Advisor. Four issues instead of three were published in Volume 24. The selection process was changed. Greater emphasis was placed on comments and articles that were national in scope. Better financing, a full-time secretary, and Law Review scholarships were sought. The teaching tool purpose was abandoned and, in Professor Manning’s words, it was time for the Law Review to “become the legal world’s window on the excellence of Fordham Law School.” It is not surprising that the Law Review’s citation record increased five-fold that year.

Professor Manning must have had a dream in 1954. He must have dreamed of taking the Fordham Law Review from its infancy in anonymity through its growth to national prominence. He must have dreamed of more issues, more pages, more citations, and, above all, more quality. He has guided the Law Review from three issues per year to six, from 393 pages per year to over 1300. He has experienced the joy of an improved citation record and has continued to press for quality of the highest degree. He deserves to be truly proud of the accomplishments that he has masterminded. Yet, he wastes no time celebrating his success. He dreams on. He foresees eight issue volumes in the near future. He foresees more pages per year, more citations, and, of course, continued quality. Professor Manning believes in the Law Review process. He believes in the Fordham Law Review, and is proud of it. It is this spirit and his dreams that continue to propel the Law Review. Editors, members, and staff come and go but he remains the constant, the guiding light.

He is the perfect advisor. His physical presence in the Law Review office is rare, but all work with complete awareness of his insistence on quality. He rarely interferes with the day to day operations of the Review but always interferes if a manuscript does not meet his standards. He lets the students run the Review but is always willing to assist when asked. He remains apart yet he is very much involved.
How many men and women have been affected by the guidance, the teaching, and the example of Leonard Manning? How many are better lawyers because of his influence? How many are better thinkers and better writers? How many are better persons because of exposure to his fairness, his unique wit and charm, and most importantly, the respect he affords others? Hundreds? Thousands? Tens of thousands? One can only speculate. But on behalf of all of these people and on behalf of all who appreciate what he has done for the Fordham Law Review, I thank Professor Manning and join in dedicating this issue of the Law Review to him. It is most fitting.

Thomas J. Hall
Editor
Volume 48
A MESSAGE FROM THE PRESIDENT

REVEREND JAMES C. FINLAY, S.J.

In this 139th year of Fordham University, I send the greetings and respect of our total University community to one of the strongest foundation points of the University—its School of Law—through the pages of one of its quality achievements, the *Fordham Law Review*. Fordham rejoices in the 75th anniversary observance of a school whose classrooms opened in the year that Czar Nicholas II crushed the Russian revolution and New York's first subway train was completing its initial few months of operation on the 9.5 mile route that it followed from City Hall to Times Square.

It is the proper business of a university to give a sense of high purpose and meaning to the lives of all those it educates. The former dean of Harvard Law School, Roscoe Pound, once observed that the law is the highest inheritance a sovereign people has, for without law there would be no sovereign people and no inheritance. During the decades in which Fordham Law School has grown to be a major component of legal education in the United States, its faculty and students have brilliantly exemplified in their teaching, studies, and careers the best hopes of this University and the best aims of the distinguished profession they represent.

It is excusable, during such a milestone period as our Law School’s present anniversary, to remark upon the notable achievements of a school’s graduates. I share fully the pride of our alumni in the contributions Fordham Law School graduates have made over the years in the halls of Congress, in state capitols across the country, and in landmark courtroom decisions that have helped set the direction for significant improvements in social justice, education, professional ethics, and business conduct. But there is also something in the Fordham educational experience rooted in the quiet statement of Thomas Aquinas that law is also an ordinance for the common good, made by him who has the care of the community, and in the more recent ringing declaration of Justice Louis Brandeis that one special glory of American law is that it has dealt not with man in general, but with him individually in relationships. Fordham Law School has graduated, and continues to graduate, hundreds of men and women whose professional careers rarely make the headlines, but which keep democracy at the service of all. Their kind of professional conduct and service merits celebration in an anniversary year and in all years.

Another college president of our generation once remarked that at a certain point in any educated person’s life, that person must start voting—voting for the values, the loyalties, and the causes that individual holds important and right. Year after year, from the vantage point of a Fordham presidency, I see many graduates of Fordham
Law School standing for ideals and working for justice that speaks more for a Fordham education than any abstract or specific claims we can make for it.

It is the business of a university to suggest what is indestructible in the best aspirations of men and women. It is the business of the law to make those aspirations realities for all. In the seventy-fifth year of Fordham Law School, that important business is not being overlooked. I salute all who are part of it.
THURSDAY, September 28, 1905, was a typical day in the first decade of the new century. There were riots in Budapest, an exodus from Port Said, and fires in Panama. In New York, the famous Wheelers H. Peckham, the Prosecutor of the Tweed Ring, had died, and Charles Evans Hughes stepped up his special investigation of the insurance industry. The New York Times, costing a penny, reported that the Government was prosecuting the Beef Trust Cases. There was diphtheria at Annapolis, and runaway horses scared strollers along Sixth Avenue. The pace of life was tranquil and prices were low. A ransom demand for a kidnapped Brooklyn youth was six-hundred dollars. Edwardian elegance was in fashion and Theodore Roosevelt dominated politics. The Bronx was a borough of rolling farmlands and scattered villages. In one of those villages, the School of Law opened on the Rose Hill campus of Fordham University.

I. ORIGINS

In June 1904, the establishment of the School of Law had been mandated by the University’s president, Rev. John J. Collins, S.J., who envisioned Fordham as a major urban university. Plans to house the fledgling Law School at the College of Saint Francis Xavier in Manhattan, however, collapsed because of Xavier’s increased enrollment. Father Collins, unable to locate suitable downtown quarters, decided to open the School in Collins Auditorium on the Campus. The Law School became a reality when its first class of thirteen students walked through the doors, beginning not only their legal education but also a legal institution.

As three law schools—Columbia, New York University, and the New York Law School—had already been established, the event was no small undertaking. The selection of the Dean and a faculty was pivotal to the success of the venture. Fordham was fortunate because Father Collins secured the services of Paul Fuller as the School’s first Dean.

Fuller, then head of Coudert Brothers, was an American Epic. Writing of him on the occasion of the Law School’s Fiftieth Anniversary, Judge William Hughes Mulligan, then Dean of the School, said:

Fuller was born on a clipper ship bound for San Francisco in the Gold Rush of ’49. His parents had died when he was an infant but he somehow found his way across the United States to the City of New York where he arrived at the age of ten without funds or friends but with a mastery of Spanish which he spoke without a trace of accent. He was befriended in New York by a former officer

* Assistant Dean, Fordham Law School; Class of ’60, Fordham Law School.
of Napoleon, Charles Coudert, who brought him into his home and into the office of his sons, Coudert Brothers, to act as an office boy when Fuller was only twelve years of age. With amazing energy and ability Paul Fuller ultimately became a partner in the firm and one of the most famous international lawyers of his day. In 1916 President Wilson sent Fuller to Mexico as his personal envoy. Although this man had never spent a day in a classroom, Fordham was indeed fortunate in obtaining his services as the first Dean of its Law School.

Assisting Dean Fuller in establishing the new School was the brilliant Jesuit jurisprudentialist, the Rev. Thomas J. Shealy, S.J. The first faculty appointment was the eminent Francis M. Pope, who also served as the Secretary of the Law School. The other members of the original faculty were Ralph H. Holland and H. Gerald Chapin, who would write the pre-Prosser Hornbook on Torts. The Honorable Alton B. Parker, former Chief Judge of the New York Court of Appeals, and the Honorable Morgan J. O'Brien, Presiding Justice of the Appellate Division, First Department, joined the faculty as special lecturers.

As part of a three year course of study, classes were held six days a week, 4:30 to 6:30 p.m., allowing the students to work as clerks in the Manhattan law firms. Since the Bronx location proved too far removed from the center of legal affairs, the School was moved early in the first year to its second temporary home at 42 Broadway. The initial “System of Instruction” called for the lecture method, which the first Catalogue described as “the system followed in the leading law schools, and is believed to be absolutely the best.” A unique and antique appendage of the lecture system was the post of “Quiz Master,” held by Francis R. Stark, Ph.D., LL.B. The apparent function of the Quiz Master was to require students to “reproduce in their own language the doctrine learned in the textbooks and lectures.” A year later the faculty declared the “absolutely best” system a failure and voted to adopt the case method. The Quiz Master passed into history—mutatis mutandis. Nevertheless, the lecture method died only with a struggle as the faculty in their 1909 meeting weighed the drawbacks of the case method with its repetition of subject matter and diversity of terminology. The agreement was finally reached that “it was essential that students should examine the several legal viewpoints of any grouping of facts.”

The case method was introduced at the insistence of Professor Ralph W. Gifford, who joined the faculty in 1906. Gifford, a pupil of James B. Ames at Harvard Law School and a distinguished student of Jurisprudence, would later become Kent Professor of Law at Yale and Nash Professor of Law at Columbia. A tour de force for Professor Holland, the Course of Studies contained in the first Catalogue was

** Mulligan, Fifty Years of Fordham Law School, 24 Fordham L. Rev. xi, xi (1955).
modified slightly from the one followed at the Harvard Law School and was a model for legal education.

FIRST YEAR
Elementary Law Professor Holland
Domestic Relations Professor Holland
Torts Professor Chapin
Personal Property Professor Holland
Contracts Professors Holland and Chapin
Real Property Professor Pope
Criminal Law and Procedure Professor to be selected

SECOND YEAR
Bills and Notes Pleading and Practice at
Corporations Common Law
Equity Jurisprudence Pleading and Practice in Equity
Evidence Pleading and Practice under
Mortgages Codes of Civil Procedure
Trusts Practice Court
Wills and Administration

THIRD YEAR
Admiralty Legal Ethics and Natural Law
Bankruptcy Medical Jurisprudence
Conflict of Laws Municipal Corporations
Constitutional Law Negligence and Damages
Corporate Bonds and Patents, Copyrights and
Mortgages Trademarks
Insurance—Marine, Fire Roman Law
and Life Taxation
International Law

The Fourth Year’s course will be outlined hereafter, and will be devoted to advanced courses in special legal subjects and to Civil Law, especially in relation to our Colonies, Roman Law and Comparative Jurisprudence.

An acerbic footnote on this development is contained in an undated and unsigned history of the School (circa 1946) found in its Archives. Our modest historian noted that subsequent to the Gifford innovations at Fordham, Harvard experimented with a liberalized curriculum. About 1939 the Harvard curriculum committee recommended abolition of the liberal program, which was to be replaced with the Gifford Course of Study. This anecdote illustrates the strength and timelessness of Gifford’s approach.

Flourishing, the new Law School admitted forty-two students in its second year, among them the legendary William J. Fallon, immortalized by his friend, Gene Fowler, in a biography entitled The Great Mouthpiece. Along with Gifford and Fallon, September 1906 saw the creation of the Law Library and the appointment of John J. Lilly, a
student, as the Law Librarian. By 1907, the registration had reached one hundred and the School was preparing to graduate its first class.

The first annual Commencement, an event in the legal community, was held in the Theatre of the College of Saint Francis Xavier. The principal address was given by The Honorable Charles Evans Hughes, the Governor of New York, and the Oration was delivered by Eugene F. McGee who had achieved the “Honors of the Graduating Class,” a distinction held by only seventy-three graduates to date. Another distinguished alumnus of the first class was Vincent Leibell, later a United States District Court Judge. They and the four other graduates formed what Dean Fuller called his “small vanguard.”

In what has been described as the Law School’s “nomadic existence,” 20 Vesey Street became the new home in 1908, a year which saw 146 students registered. As the student body reached 204 a year later, the prudent planning of Dean Fuller and Father Shealy bore fruit. When the state requirements for law school diplomas and admission to the Bar were changed to mandate a three-year course of studies instead of the customary two, no curricular revisions were required at Fordham. The faculty grew to keep pace with an expanding student body. In 1907, Frederick R. Coudert became a Special Lecturer in Constitutional Law, and five professors joined the faculty the following year, including the distinguished Michael F. Dee, who was Pro-Dean from 1912 until 1924. The Law School also acquired two Librarians (sans a new library), an Academic Dean, a Registrar, and an Assistant Registrar.

Not only had the physical size of the Law School increased by the second decade of the new century but also its prominence had grown. As announced in the 1911-1912 Catalogue, Fordham was able to obtain the services of William A. Keener, Professor of Law at Harvard Law School, Dean of Columbia Law School, and Justice of the New York Supreme Court. The ever-expanding enrollments of the Law School forced our legal nomads to fold their tents and move to 140 Nassau Street where it occupied the “entire ninth floor of the building with accommodations for more than four hundred students” after August 1, 1911. Finally, the names of three men who would make a lasting impression appeared in the Catalogue’s Register of Students for Senior Year: Ignatius M. Wilkinson, who would lead the Law School for thirty years, and John T. Loughran and R. Albert Conway, who would leave a rich legacy to national jurisprudence as Chief Judges of the New York Court of Appeals.

In the academic year of 1911-1912, the most important question facing the faculty was the creation of an Evening Division, to which the faculty had long objected. Professor Dee related a synoptic but telling account of how this difference between the Faculty and the University Administration was resolved:

In the spring of 1912, Father McCluskey, then Rector, considered with Dean Fuller, Father Shealy, Mr. Gifford, and with me, the
question of opening an evening school. We gave him our reasons against it, and he gave us a single reason for it, and it was decided that an evening school should open the next fall, as it did, with a schedule of six evenings a week.

What the "single reason" was has been left unrecorded.

As dictated, the Evening Division opened, a sustaining force for the Law School and the University in many an unanticipated troubled time. The Catalogue stated that "[t]he subjects offered in the Evening School will be identical with those offered in the Day School." Although the Catalogue did not mention it, the faculty teaching in that Division would be the same as the teachers of the Day Division, a tradition maintained until this day. In addition, two young lecturers—the recently graduated Wilkinson and Loughran—joined the senior faculty in the Evening School.

Growth, however, is always accompanied by change. Professor Gifford left to teach at Yale Law School. The high esteem in which he was held at Fordham was manifested by the awarding of the University's first honorary Doctor of Laws to him in June, 1912. Dean Fuller withdrew from the School because of age and the burdens of a large practice. To replace Fuller, Father McCluskey appointed John Whalen, whom Professor Dee described as "supposedly a rich man." Professor Dee offered no further elaboration on the wealth of Dean Whalen.

In the words of Rev. Robert I. Gannon, S.J., the Law School had "nothing to worry about but rent and salaries." During the academic year 1912-1913, the practice of holding classes six days a week was abolished and the Moot Court program, which has been a Fordham hallmark, was inaugurated. Graduates of the Class of 1913 were extraordinarily successful in the Bar examination.

At the examination for admission to the Bar, held at the mid-term (1913), before the Court of Appeals in Albany, six hundred applicants for admission came from different Law Schools in the State. Only seventy passed the examination, which is about eleven per cent. Eighty-eight per cent of the Fordham men were successful. At the examination of the final term, forty-eight per cent of those who presented themselves, were successful, while the percentage of Fordham men who passed, was eighty-five.

Filling the gap left by the death of Professor Keener was I. Maurice Wormser, a man destined, according to an earlier Law School historian, to "become one of America's foremost legal minds." A graduate of Columbia Law School, he had taught at Columbia and had been a professor of law at Illinois. This brief summation of his career found in the School's Archives accurately assesses Wormser, the scholar and teacher:

Wormser's teaching career at Fordham spanned a period of 42 years during which time he taught practically every major course
in the school's curriculum. Professor Wormser, however, gained his wide reputation in the area of contracts and corporation law. His philosophy was ideally adapted to the developments in the law during his tenure at Fordham. His belief in the underlying principle that law's most important function was to insure justice and his adherence to the principle of stability and uniformity in legal thinking balanced his equally strong conviction that the law was not static but had necessarily to conform to the changing needs of an expanding society.

By the Fall of 1914, the optimistic predictions of growth at 140 Nassau Street were realized as registration stood at 436. A complementary expansion of the faculty was also necessitated. The Law School was now intellectually and financially strong enough to launch the *Fordham Law Review*. The Review, however, was to be short-lived. While America was at peace, Europe was being shattered by the early stages of the Great War. As dynasties crumbled, the Law Review published articles such as “The True Presumption of Death in New York,” and advertised such marginally legal items as Tuval's Havana Cigars and Kich's French Bread. The masthead of the Review's second volume bore the name of John A. Blake as Editor-in-Chief, a man who would be one of Fordham's best-known professors and a New York State Bar Examiner. Sadly, there was not to be a long line of successor Editors-in-Chief. The June 1917 issue of the Review carries this brief statement:

Owing to the war, the Review will close this year with this number.

With the involvement of America in World War I, the Law School acquired a new home, the twenty-eighth floor of the Woolworth Building “where accommodations [were] provided for between 700 and 800 students.” The move in 1916 was necessitated by the rapid increase in the student body to 537, but the active participation in the war changed everything. Our anonymous chronicler aptly summed up the war years when the existence of the Law School was in jeopardy.

In 1917 the School, which had grown from a handful of students to a student body of over 500, was faced with the decimation of its members by the declaration of a state of war by the United States with Germany and Austria and the operation of the first Selective Service Act of 1917. It became necessary to consolidate the then two sessions of the School in a single session in the Fall of 1918. The writer remembers attending a meeting of the faculty of the School early in September 1918 called by the then Rector of the University, the Reverend Joseph Mulry, S.J. The question before the meeting was whether the School should try to continue for a while or whether it should suspend operations for the duration of the war, the statement being made to the meeting that the then
military view was that the war was likely to continue for three or four years more. When it came the writer's turn, as one of the younger members of the faculty, to express his views he stated that it was easier to close an institution than to open it again, that in his opinion the war was much nearer an end than presently seemed likely as was indicated by the large numbers of German prisoners which evidenced a weakening of the German morale. He stated that were we to close the School and the war were to end within ninety days we would find ourselves in a most undesirable position and he urged continuance of the School as long as possible. It is interesting to note that within six weeks of the meeting, hostilities were over and the educational world was on the eve of the greatest boom in education ever witnessed until the operation of the G.I. Bill of Rights after World War II created an even greater need for expansion of educational facilities. With the rapid release of men from the armed forces in the later part of 1918 and early 1919, the two sessions of the School were restored at the beginning of the second semester in 1919.

In retrospect, the problems of the war years seemed minor when compared to the issue faced by the faculty at its May, 1918 meeting—women's rights. The faculty minutes noted that shortly before the close of the meeting, the Rector "asked for a discussion of the advisability of matriculating women in the Law School. After listening to the opinion of the various faculty members, he announced that he would take the 'matter under advisement' and notify the Faculty of his decision." The minutes contain this P.S.: "In a letter from the Rev. Rector ... under the date of July 6, 1918, he writes 'it has been decided that, owing to objections raised against it, women will not be admitted to classes of the Law School this Fall.' " The minutes do, however, contain a terse and unexplained amendment. "In September 1918 the Rev. Rector authorized the matriculation of women and ordered the insertion of this fact to be put in the newspapers."

The resignation of Dean Whalen in 1919 brought to Fordham the services of Francis P. Garvan, then serving as Alien Enemy Property Custodian. Father Gannon described the circumstances of the appointment of Dean Garvan:

[University President] Father Tivnan's only worry in 1919 was the appointment of a new Dean. His choice fell upon Francis P. Garvan, the brother of Mrs. Nicholas J. Brady. This unusual lawyer relieved the President's mind considerably by agreeing to make good all deficits which might appear during the next five years—an offer unmatched by any Dean in the country before or since. He also proposed to hand over $1,000,000 to the university if it would sell out and move to New Haven where it could be supervised by Yale, his alma mater. For some reason this generous offer was not accepted.

The period of 1918 to 1923 saw unprecedented growth for Fordham, requiring the opening of an additional section of the Day
School in 1922. At the same time, the late afternoon section of the Law School was moved forward. The number of students increased from 320, in the last year of the war, to 1,462. The corresponding expansion of the faculty included such well remembered professors as Francis X. Carmody, Francis J. MacIntyre, Frederick L. Kane, Cornelius J. Smyth, John A. Blake, Lloyd M. Howell, Edmund Borgia Butler, and the Rev. Moorehouse I.X. Millar, S.J. The Law School also acquired, in the Woolworth Building, its first permanent law library. In 1923, Pro-Dean Dee resigned from the School, never to be replaced as the office of Pro-Dean was abolished in November, 1923. That year also saw the departure of Dean Garvan. As his replacement, Reverend Edward P. Tivnan, S.J. appointed Ignatius M. Wilkinson.

II. The Wilkinson Years

In many ways, a new Fordham Law School began with Ignatius M. Wilkinson, who was to govern it for thirty years. The School that he headed would be unfamiliar to those who walk the halls of the Lincoln Center campus. The average teaching load of a professor was twice that of today's teachers; most students were not college graduates; and tuition was $180 per annum. The facilities were cramped, and the Law Library's greatest attractions were its location "looking east, with an unbroken view for many miles," and its legendary librarian, James F. Kennedy. The faculty, mostly adjuncts, was composed of six professors, five associates, and twelve lecturers in law. The rules of the School were those drafted by the 1907 faculty, largely ad-hoc determinations to meet specific circumstances.

Initially, Wilkinson established higher academic standards for admissions. Beginning in 1924, completion of one year of college work or its equivalent was required for matriculation even though a substantial number of accredited college graduates were among Fordham's student body. In 1927, the one-year requirement was increased to two years of college work or its equivalent, and the provisions for equivalents were stricken in 1930. Wilkinson then replaced the outmoded 1907 rules with a coherent set of rules and regulations that are, in most cases, still in effect. These rules have survived the slings and arrows of outrageous faculty, students, and administrators.


Of enduring importance, Dean Wilkinson began the Alumni Association. At that time there were some 1,600 Fordham graduates
living in or near the city. One hundred alumni attended the inaugural session of the Association on a rainy evening. Unfortunately, the initial endeavor was not successful, collapsing along with the boom and prosperity of the Roaring Twenties. The Association remained dormant throughout the Thirties, although an attempt to "revivify" the Association from "the state of innocuous desuetude into which it has fallen" was made in 1939.

For the Law School, the Thirties was a period of stability and maturation despite the economic chaos of the Depression. The enrollments remained stable at the one thousand level, and the core faculty, most of whom would teach through the Fifties and beyond, brought the Law School into the mainstream of American Legal Education. Accreditation was the School's next major goal. Fordham, in conjunction with the principal bar associations and other law schools, urged the New York Court of Appeals to mandate a four year scholastic program for the study of law during either the late afternoon or evening rather than the chronologic parity these sessions shared with the regular day curriculum. The Court of Appeals, in its consideration of the application, postponed its decision, stating that the interesting supporting data would be the subject of careful reflection. In 1933, through efforts of Fordham, the Court of Appeals amended its rules so that discretionary expansion of late afternoon and evening programs was permitted. Thus, the Law School placed evening and late afternoon students who entered in 1934 on a four-year schedule. As a result of this action, the Law School obtained the approval of the Council on Legal Education of the American Bar Association and became a member of the Association of American Law Schools in 1936.

The Wilkinson years had its revivals and its gaps. In 1935, the Fordham Law Review, which had an abortive existence prior to the First World War, was re-established with Professor Walter B. Kennedy as the Faculty Advisor. In one of the twentieth century's great mysteries, the Honorable Joseph Force Crater, a member of the faculty, disappeared, never to be seen in a Fordham classroom or anywhere else again.

Perhaps the most dramatic event of the Thirties was Dean Wilkinson's opposition to President Franklin Roosevelt's Supreme Court reorganization plan. As a result of a New York Herald Tribune article, the Dean was invited to testify before the Senate Committee holding hearings on the "Court Packing Plan." At the conclusion of the direct testimony, the Dean filed a statement signed by every member of the Law School faculty.

Members of the faculty of Fordham University School of Law, although holding various political opinions, are opposed to the plan of the President for reorganization of the Supreme Court of the United States because they regard the proposal as undesirable and dangerous to the maintenance of a free and independent judiciary.
which is essential for the continuance of constitutional democracy in this country.

This statement of their views is made by them individually and not in the form of a resolution of the faculty of the School.

The statement attracted nationwide attention in the press and brought praise to the Law School from the Honorable William L. Ransom, the retired president of the American Bar Association, in a letter dated April 8, 1937.

I want to congratulate you most heartily, not only upon the excellent statement which you made in opposition to the Supreme Court proposal, before the Judiciary Committee of the United States Senate, but especially upon the impressive statement which you presented in behalf of all of the members of your Faculty of Law.

At a time when so many teachers of law have gone "hay-wire" in impromptu acceptance of this awkward and alarming method of accomplishing needed progress in legal doctrine, it is gratifying and reassuring to find that the faculty of a fine law school is unanimous in well-considered opposition. And I know that yours is a fine, sound law school!

Former Dean (now Judge) William Hughes Mulligan has appropriately christened this period as "the Salad Days of the Law School." Over one thousand students met in four sessions on two campuses. It was an golden era, both professionally and financially. The Law School produced, by the score, leaders of the Bar, corporate executives, legal educators, and high public officials. The policies of the State of New York were determined for many years by two Fordham graduates—former Governor Malcolm Wilson, '36, and former Attorney General Louis J. Lefkowitz, '25. Fordham graduates from this period were represented on the judiciary by two Associate Judges of the New York Court of Appeals (Adrian P. Burke, '30, and John Sciulleppi, '25) and Chief Judges of the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York (Irving R. Kaufman, '31, and David N. Edelstein, '34).

In 1940, the Law School celebrated its thirty-fifth anniversary somberly and quietly, for Europe was once again at war and the American economy was still depressed. The "war jitters" of law students ended when America officially entered the Second World War on December 7, 1941. During the war, enrollments dropped drastically, and doubts were raised as to the survival of the Law School. In March of 1943, for example, there were only sixty-six full-time students, and 180 part-time students. Oddly enough, women were not in the majority, nor did they approach the number of women who compose one-third of the present student body. When the number of full-time faculty dropped to four, the Law School began to offer ac-
celerated courses. In the midst of all this upheaval, the University decided to move the Law School because of the rising costs of rentals in the Woolworth Building. The new home of the Law School was located in the top five floors of the Vincent Building at 302 Broadway.

With the end of World War II, schools that were largely vacant for four years were besieged by thousands of returning students eager to take advantage of the newly enacted G.I. Bill of Rights. While the academic side of Universities questioned standards of quality, Treasurers smiled. At the Law School, the uncertain planning for the returning students had begun in earnest in the winter of 1944. The faculty voted to admit only college graduates in the future, thus aligning Fordham with the other major law schools. Provisions were made, however, to accept lesser credentials of those who had been law students before the war and those who had served in the Armed Forces. These requirements became effective in 1946.

Substantially, the curriculum remained the same as the course of studies followed in the Thirties. The need was not for new electives but for new and great teachers to be fitting replacements for the distinguished professors who retired during the post-war years. Godfrey P. Schmidt, Joseph A. Doran, and Thomas Sneé were added to the faculty for the academic year 1946-1947, to be followed by William Hughes Mulligan and Bernard J. O'Connell the next year. During this formative period, Edward J. Freeman, John E. McAniff, and Leonard F. Manning, one of Fordham's greatest teachers, also joined the faculty.

Dean Wilkinson died in 1953. For thirty years the Law School bore the stamp of Wilkinson, and his influence is still felt. In fact, his last faculty appointment was a true gift to the School—the great and distinguished teacher-scholar, John D. Calamari. In what might be described as an interregnum, Professor George Bacon served as Acting Dean for one year and was succeeded by John F.X. Finn. Unfortunately, the Law School was soon to be deprived of this great teacher due to his sudden death in 1956. Death had also dealt the faculty a severe blow when Professor Wormser passed away, ironically, at the celebration of the Fiftieth Anniversary of the School he loved and served so well.

William Hughes Mulligan was appointed Dean in 1956. The awesome task of putting Fordham into the ranks of the nationally recognized great law schools fell on his shoulders. Of his tenure as Dean, a comparison to the reign of the Emperor Augustus is apt—he found Rome a city of brick and left it a city of marble. Of course, other opinions of that period existed. Miss Mary Long, who was for many years Registrar of the Law School, is rumored to have said of the three deans from 1953 to 1956: “The Dean died in 1953 and was succeeded by Mr. Finn, and when he died, Billy Mulligan took over.”
III. The Augustan Age of Mulligan

In 1956, Dean Mulligan inherited a Law School virtually identical to the post-war school filled with returning G.I.'s. His problems were those facing Dean Fuller, but on a grander scale. Enrollments had stabilized at approximately 700 students, but the course of studies was basically unchanged for over two decades with only ten elective offerings. There were ten full-time faculty members and sixteen adjuncts. The entering class of 1956 represented eighty-one colleges and the L.S.A.T. was not required.

Dean Mulligan's first major undertakings were to increase the faculty size and refine the quality of the student body. In a three-year period, nine faculty members were appointed. Among them, Joseph R. Crowley, in Labor, and Martin Fogelman and Robert A. Kessler, in Corporations, have gone on to attain great stature in the legal community. Dean Mulligan then made the L.S.A.T. an integral part of the admission criteria. He also encouraged recruitment at well-known colleges and universities because the vast majority of the students still came from Fordham College in this period. Numerical marks were given and class standings were closely maintained for the Fordham graduate would begin to make the incursion into the sanctum sanctorum—the Wall Street firm. Placement was to have a high priority.

The physical aspects of the School also concerned Dean Mulligan. The library then held a mere thirty thousand volumes, and its view was still its major attraction. To improve the library services, he appointed a lawyer and professional librarian, Eugene Wypyski, but obviously, the collection would have to be enlarged. Finally, there was the future home of the Law School at Lincoln Center to be planned and financed. Few can appreciate how much the new law school building was desired. As it was described in the 1960 Catalogue,

[the building for the School of Law to rise against the horizon northwest of Columbus Circle will include eight large lecture rooms and three smaller seminar rooms, twenty faculty offices, the Moot Court Room, spacious student faculty lounges. It will have a fully equipped law library with room for 225,000 volumes and ample space where scholars-students, alumni and friends can study, do research and write.

As the Law School planned to move, faculty movement was also evident. Vacancies left by the deaths of Professors Butler and McGivney and assumption of a judicial position by the great Victor Kilkenny were filled by Charles E. Rice, Earl Phillips, Rev. Charles M. Whelan, S.J., and Joseph N. Fournier, whose subsequent resignation paved the way for the appointment of Joseph M. McLaughlin, "supposedly a rich man." The nomadic existence of the Law School ended in 1961 when the Lincoln Center building opened. Its dedication
would have made its founders proud. The United States Attorney General, Robert Kennedy, spoke and was awarded an honorary degree; major papers were read by Professor Arthur E. Sutherland of Harvard Law School and Ambassador Adlai E. Stevenson. The new location, however, did not end the efforts of Dean Mulligan to enlarge the faculty. Throughout the Sixties, gifted men joined the faculty such as Robert M. Byrn, Thomas M. Quinn, Joseph Perillo, Ludwik A. Teclaff, Assistant Dean Robert M. Hanlon, Jr., Malachy T. Mahon (the first Law School graduate to clerk for a Justice of the United States Supreme Court), Constantine N. Katsoris, Edward F.C. McGonagle, Joseph C. Sweeney, Barry Hawk, Michael Lanzarone, and William J. Moore.

The strength of the Law School still lies in its teachers and its course of studies. In a comprehensive curriculum review that began in 1967, old courses were abandoned or merged as innovative electives were introduced. For instance, Advocacy was added before it became popular. Study and refinement of the curriculum continued until today's course of studies, providing for only forty-one required hours and eighty elective hours, was adopted in 1972. Although abandoning the old vintage curriculum from the Thirties, the faculty had preserved the best in offering a balanced program.

The decade of the Sixties, beginning with such pomp and circumstance at the opening dedications, ended in the maelstrom of the Vietnam War. In the midst of student protests and hard-hat retaliation, the Augustan Era ended with the resignation of William Hughes Mulligan as Dean in 1971. His plans for a return to academia were short-lived, however, because he was appointed to the Second Circuit Court of Appeals that same year.

The decade of the Seventies began on an uncertain note. Coupled with the student clamor for "input" into the Law School governance was the need to select a new Dean. This person would face challenges as profound as the problems confronted by his illustrious predecessors, steering a course on a stormy sea at a time when most of our navigational tools—traditional values—were being called into question. The choice of Joseph M. McLaughlin, a member of the faculty since 1961 and one of Fordham's great teachers, was fortunate.

IV. THE MARBLE STILL SHINES: THE MCLAUGHLIN DECADE

Accepting the inheritance of the Law School, Dean McLaughlin pledged "to follow the style and tone of my predecessor." To augment the massive curriculum revisions begun by Dean Mulligan, nine new faculty members were added to the School, including Gerald McLaughlin, Frank Chiang, Michael Martin, Donald Sharpe, Gail Hollister, and Peter O'Connor. Dean Mulligan, who vacated the Dean's Office only when served with a notice of eviction, elected to
remain as an adjunct. These timely additions coincided with the unprecedented surge in law school registration. Fordham enrollments reached its highest since the halcyon Twenties when the School had four divisions on two campuses. The student body grew from 673 in 1961 to 1,100 in 1980. Despite the record numbers, the quality of the students has not been sacrificed. The average entering class for these years represented over 120 colleges and universities. Students called such distant places as London, Seoul, and Jerusalem home.

The intellectual and cultural life of the Law School has expanded. The John F. Sonnett Memorial Lecture, begun in 1970, received national prominence when in 1973, The Chief Justice of the United States, Warren Burger, used it as a forum to question the state of advocacy in state and federal courts. Besides the Chief Justice, the roster of the Sonnett speakers has included such luminaries as the Honorable Tom Clark, Justice, United States Supreme Court, the Honorable Irving R. Kaufman, Chief Judge, United States Court of Appeals for the Second Circuit, the Honorable Leon Jaworski, Special Prosecutor, the Honorable William Hughes Mulligan, United States Court of Appeals for the Second Circuit, and the Honorable Benjamin R. Civiletti, Attorney General of the United States. Another major event at the Law School is the Louis Stein Award. Dean McLaughlin has forecasted that this award will "be generally regarded as the 'Pulitzer Prize' of the legal profession." The award has been presented to the Honorable Henry J. Friendly, United States Court of Appeals for the Second Circuit, the Chief Justice of the United States, Warren Burger, Edward H. Levi, former Attorney General of the United States, and Wade H. McCree, Jr., Solicitor General of the United States.

Equally significant, the Annual Corporate Law Institute has become an event of international import. Uniting a faculty of scholars, practitioners, and experts, the Institute thoroughly explores timely corporate problems over a two-day period. The 1979 Institute, chaired by Professor Abraham Abramovsky, was designed to "provide corporate counsel with a broad and expert analysis of criminal law problems which may affect the corporate entity, its officers and directors." Prior Institutes, the proceedings of which have been published, were: Antitrust and Related Problems of the Multinational (1974 Institute, edited by Professor Barry Hawk); International Project Financing (1975 Institute, edited by Professor Joseph C. Sweeney); International Taxation and Transfer Pricing (1976 Institute, edited by Professor Edward Yorio); International Regulation of Maritime Transport (1977 Institute, edited by Professor Sweeney); and International Antitrust (1978 Institute, edited by Professor Hawk).

The success of these events, as well as the general good health of the Law School, is partially due to the devoted and loyal support of the Law Alumni Association. The Alumni Association is a thriving institution of over eight thousand members, far removed from that
state of "innocuous desuetude" lamented by Dean Wilkinson in the Thirties. The Dean once commented, upon receipt of the Association's bank statement with a balance of $65.72, that "although in a state of suspended animation it is at least solvent." The fall of 1948, however, saw the beginning of the "revivication" of the Association, which earnestly began in 1950 under the presidency of The Honorable James B. M. McNally. The gratitude of the Law School is owed to him and his capable and devoted successors, Edward B. Schulkind, Caesar L. Pitassy, Judge William C. Hecht, Jr., Denis McInerney, Harry J. McCallion, John D. Feerick, and John Vaughn.

Dean McLaughlin has continued to expand the faculty, adding such young and bright people as Maria Marcus, Andrew Sims, Hugh Hansen, Abraham Abramovsky, Marilyn Friedman, Helen Hadjiyannakis, Claudette Krizek, and Michael Madison. This recent expansion was sadly accompanied by the loss of Fordham's two greatest teachers, Victor Kilkenny and George Bacon. Their legacy, however, lives on in the newly established Bacon-Kilkenny Chair for a Distinguished Visiting Professor. Dean McLaughlin has described the Chair as "the first fully funded Chair in the University" that "represents a tangible and enduring tribute to two great teachers who left a permanent imprint on the Law School." The first Bacon-Kilkenny recipient is Douglas A. Kahn of the Michigan Law School.

The curriculum, under constant study and review, has been modified to bring the Law School into a position of leadership. In the 1979-1980 academic year, the "mini-section" for first year was introduced. Each first year student takes a major course and a Legal Writing course in a class of a maximum of twenty-five. The program is designed to "promote a closer personal interaction between the professor and the student." New courses are introduced as the need arises. The academic year 1980-1981 will see three new courses in the areas of Immigration Law, Franchising, and Advanced Problems in Litigation.

Co-curricular programs abound. The distinguished Fordham Law Review now has the Urban Law Journal and the newly established International Law Forum as respected colleagues. The Moot Court Board oversees an extensive program of competitions that have the stature of an Institute of Advocacy. In response to the challenges of Chief Justice Burger and Chief Judge Kaufman, the Board began an intensified program of competitions that culminated in 1979 when the Fordham Team of Michelle Daly, Orin McClusky, and Georgene Vairo won the National Moot Court Competition. Of course, the Officers of the Student Bar Association and the Editors of the Advocate are always ready to offer their sound advice to the Administration on all phases of Law School governance.

Instead of detailing the current curriculum, I quote from the 1975 Dean's Report "rendered partially in cacophonous adaptions of Gilbert and Sullivan wherein the course of studies is both puffed and
twitted in a parody of 'I am the very model of a modern Major General' (The Pirates of Penzance)."

(Scene: A faculty meeting called to hear a report by the Lord High Curriculum Committee.)

Comm. We have the very model of a modern course of studying.
We've Curricula clinical, cynical and muddying.
We know the lords of Crim'nal Law and quote pithies from Miranda,
From Escobedo, Gideon and others Crim'nally grander.
We're very well acquainted too with delicts most Palsgrafian,
Proclaimed by law professors both Cardozian and Falstaffian.
About loverly Tax Shelters we're teeming with a lot o'news—
With many cheerful facts about this delightful, deductible ruse.

Fac. With many cheerful facts, etc.

Comm. We're very good at Bankruptcy and X Reorganizations.
Internation'ly we've Admir'lty and Trade with Asian Nations.
In short, in matters clinical, cynical and muddying,
We have the very model of a modern course of studying.

Fac. In short, etc.

Comm. We profess law ex contractu from Lawrence all the way to Fox.
We answer Contracts queries, "Who knows? Assumpsit's a paradox."
Though here and there we interject a wee bit of Sumerian,
Our Law History is Roman 'cause Common is vulgarian.
We lecture stoppage in transitu (which sounds quite Bulgarian,
But is recognized otherwise by ev'ry Code grammarian).
In Property, you will see a quitclaim drawn with acuity,
But never, hardly ever, do we Trust in perpetuity.

Fac. But never, etc.

Comm. In Law Environmental, we're exceedingly sentimental,
And practically parental toward nature elemental.
Indeed, in matters clinical, cynical and muddying,
We have the very model of a modern course of studying.

Fac. Indeed, etc.

Comm. Labor Law is warbled in verse to our sisters and our brothers—
By an Irishman and an American federation of others.
Trade Regulation and Civil Rights would keep us in good humor,
Except for vile discrimination and fraud on the consumer.
Cosmopolitanly Corporate is our yearly Institute,
Where Dublin sits next to Belfast and Tel Aviv talks to Beirut.
Finis—we have the Law Prize Stein and the Legal Lecture Sonnet,
To put a lively bee or three in the legalistic bonnet.

Fac. To put, etc.

Dean "Finis?" A pox on Lawrence—Fox! Where's the sine qua non of law:
Why on this lamentable list is there not the CPLR?
Comm. Because in matters clinical, cynical and muddying,
We have the very model of a modern course of studying.

Fac. Because, etc.
Thus, Fordham Law School, at seventy-five, is alive, well, and flourishing. Distinguished Alumni occupy positions of influence at every level of the profession. To cite some recent favorable comments:

The Texas Bar Journal (September, 1972)—The Fordham Law Review grades out in the top 25 legal periodicals in a comparative analysis "which may be considered a reasonably effective ranking of general law reviews for an attorney to use in expanding or checking his library holdings of legal periodicals."

The ABA Journal (January, 1975)—Fordham is among the 16 law schools having the largest alumni representation among partners in those law firms in the United States with 50 or more lawyers.

The ABA Journal (August, 1975)—Fordham ranks seventh among the law schools in the number of graduates occupying chief legal officer positions in the 500 largest publicly-held corporations in the United States.

The New York Law Journal (February 25, 1976)—Fordham is among the six law schools which furnished 88% of new partners in notices of newly made partners received by the Journal over a three month period.


The National Law Journal (September 18, 1978)—Based on a statistical study of application and acceptances, Fordham is "the fifth hardest [American law school] to get into."

Juris Doctor (August/September, 1978)—in a survey of graduates of American law schools, Fordham law alumni rank fifth in median income among those in private practice and eighth among those not in private practice.

CONCLUSION

With a faculty larger than the student enrollments of the founding years and a student body growing in quality and quantity, the Law School celebrates its Diamond Jubilee aware of its past but committed to its future. Plans are already underway to expand the Law School buildings and to increase the Library collection, the size of the faculty, and the support services for the students. Through it all, we shall yet keep a candle in the window for Judge Crater. Just as in September, 1905, there is a riot, an exodus, and a fire in some part of the world. Runaway bicycles now frighten strollers on Fifth Avenue and the Times costs a quarter. Hard by the cultural enclave of Lincoln Center, however, Fordham Law School can still claim as its motto—

*Esse quam videri!*
A FORMER DEAN REMEMBERS

WILLIAM HUGHES MULLIGAN*

My first encounter with Fordham Law School was in the summer of 1939 when I visited the 28th floor of the Woolworth Building, presented my college transcript, paid a minimal deposit, and was immediately accepted for admission in the day school, morning division, starting that September. I had no inkling, of course, that the relationship thus commenced would continue for more than thirty years with time out for military service and a year of practice. The Law School had a library, but it was not catalogued, and our single librarian, Jim Kennedy, hid the Hornbooks lest they be stolen. We had no lockers, no lounges, no moot court, no dining facilities, and precious few electives. We did have a small but excellent teaching faculty and an avid student body which had its appetite for learning whetted by a depression which still persisted.

The star performer of the first year faculty was the late I. Maurice Wormser who taught Contracts and, in the second year, Corporations. Wormser was the best professor I ever had anywhere, and a substantial number of my contemporaries agreed. He was totally deaf, and placed a mysterious black box on his desk with a connecting wire and a button which he placed near his ear. This contraption presumably made our case recitations audible to him. It was, in fact, a complete fraud. The box was an empty shell and a mere prop for the consummate actor which Wormser was. Once your lips stopped moving, which he detected by occasional sly glances and not through the use of the machine, he proceeded to probe with questions which had to be answered in the affirmative or negative. After a few questions, Wormser knew whether you knew what the case was all about. If you didn't, he proceeded with hypotheticals so that eventually even the most obtuse began to recognize what the issue was and how the court reacted to it. In later years, I became closely associated with Wormser. He had a brilliant mind, but was completely gentle and forbearing, a loving husband and father, and a perfect colleague. I loved him.

Although Wormser was the star, he was by no means alone as a great teacher of law. John A. Blake, Ignatius Wilkinson, Walter B. Kennedy, John F.X. Finn, George Bacon, Victor Kilkenny, Roy O'Connell, and Joe McGovern were all superior classroom performers.

My class started law school as Germany invaded Poland, and in our senior year the Japanese bombed Pearl Harbor. Those were days of tension and turmoil, but the Law School faculty and students alike

* Circuit Judge, United States Court of Appeals, Second Circuit; Class of '42, Fordham Law School.
proceeded with the process of legal education with equanimity and without panic. The students of the late sixties at the Law School were semi-hysterical with less cause and were for a time more interested in protesting than in law studies. They were better behaved than most of their contemporaries, but were still a less hardy breed, which I am sure they were sick and tired of hearing from their parents and ancient law school deans.

After military service and some months of practice with Lorenz, Finn & Lorenz, I learned from professional sources (the New York Athletic Club bar) that the Law School was looking for teachers. I was interviewed by Dean Wilkinson who, after reviewing my work experience (primarily three years as a Counterintelligence Agent in World War II), advised me in his usual avuncular style that if he were running a detective agency he would hire me, but after all this was a law school. Several months later his reservations evanesced, probably because the handsome starting salary of $4,000 frightened away those who were qualified. The law school was then housed in an ugly dark building, 302 Broadway, which was better suited for the housing of opium dens or massage parlors than the educational ventures upon which we and our sister schools of the University were embarked. Wilkinson ruled the school as an absolute monarch by Divine Right, a system of academic governance now looked upon with considerable disfavor. Since the faculty had only two meetings a year and no committees, we were given the opportunity to become totally immersed in our subjects rather than becoming mired in the Serbo-Croatian Bogs of academe. We somehow persisted and in fact flourished and eventually, as you all know, entered Beulah Land, Lincoln Center, where we shall all live happily ever after. I cherish the association which still exists in my heart and soul.
"302 Broadway, Corner of Duane," the home of Fordham Law School, was a converted office and loft building, which was shared with the School of Education. Classes were large and the small classrooms generally were crowded. Seats were assigned in alphabetical order, and attendance was carefully recorded. As a result of this system, students were soon known by name by their professors and classmates. I believe that this significantly contributed to the concerned and friendly feelings that were customary during those days. Some ties remain stronger, but the friendship among all our classmates and professors has continued through the years.

One of my most vivid remembrances is the evening that I became a Fordham student. I was working as a law clerk in the managing attorney's office of a large Wall Street firm and had decided that I might enter a law school for evening sessions. One fall evening I strolled from Wall Street to 302 Broadway with the purpose of inquiring about Fordham's evening sessions. I was met by the registrar, Mary Long, a cheery, forceful woman whose influence, I later learned, reached far beyond the registrar's office.

In rapid succession she inquired about my school background and work experience; if I was absolutely certain that my transcripts, when they arrived, would contain the exact facts that I had stated; and if I had enough money with me to make a down payment on my tuition. Stating that the term had begun and that classes had started for the evening, she instructed me to rush to a described classroom and to return at class break to sign papers and make my tuition payment.

In a daze I rushed upstairs, entering the wrong classroom. I slipped into the nearest unoccupied seat. A short time thereafter, Professor John Blake looked over his pince-nez, his blue eyes directed at me as he said, "Pray tell young woman what are you doing in my class?" Terror sealed my lips. I could not answer. Instructing me to see him after class, he returned to normal classroom activities. Fear changed to fascination as a complex exchange of ideas filled the room. The unfamiliar terms were like a rabbit dangled before a whip-pet. I vowed nothing would keep me from this school. I have never known if this was the usual admission procedure or if Mary Long, never referred to as "Mrs.," "Miss," or "Ms.," facilitated the entry of a woman.

There was no "typical" Fordham student in those days. The students included returning World War II veterans, recent college graduates, lawyers who had fled Nazi Germany or communist coun-

* Family Court Judge of the State of New York, County of Westchester; Class of '47, Fordham Law School.
tries seeking to start anew, corporate executives, and PhD’s. There were persons of all ages, races, religions, and financial status. Prejudice was non-existent. Women were accepted and shared equally in all privileges and obligations. I make this statement in retrospect, because during my student days, that it might have been different never crossed my mind. I was completely happy at Fordham. Most students lived in the five boroughs of New York City and the surrounding areas, and only a few travelled from Connecticut and New Jersey. There were no scholarships or monetary awards other than the Chapin Award which at my graduation consisted of the sum of eighty-one dollars.

These were the golden years for law professors. They were respected, praised, and loved by their students. The inevitable result of this outpouring of affection was a level of inspired teaching which I do not believe has ever been equalled. One of our greatest pleasures was to gather at a local restaurant, “Gasner’s,” on Duane Street where we sat at a large round table in the company of one or another of our favorite professors to share a glass of beer and to bare our ideas, plans, and aspirations.

No comment is necessary to establish the nationwide reputation of the numerous academic giants on the Forties faculty. It included, in alphabetical order, George Bacon, John Blake, Paul Carroll, Francis X. Conway, John F.X. Finn, Eugene J. Keefe, Walter B. Kennedy, Victor S. Kilkenny, John A. McAniff, Joseph McGovern, William Hughes Mulligan, Thomas Rohan, and I. Maurice Wormser.

Professors were permitted to devote a portion of their time to the practice of law, and most did so. This gave an added dimension to their teaching, especially in courses such as Evidence and New York Practice. Classes were never dull. We dealt with imaginary clients, courtrooms, judges, law officers, and yes—I confess that the lawyer whose level of expertise conquered all—was each of us. Who could help but study and learn as much as one’s mind could absorb when, daily, such visions danced in your head?

Jim Kennedy, surely the reincarnation of a leprechaun, was the librarian. Al DeStefano, now Professor DeStefano, was his student assistant, a job most envied by other students as he could study while he worked. The layout of the library was deceptive. A large two story room in front held an adequate selection of law books. In back, however, was a small room containing the treasures selected by Librarian Kennedy for privileged use. Admission to that room, which saved trips to bar association or firm libraries, was granted only after you were judged worthy by standards never made public. Clean hands were essential.

James Joyce, when asked what his Jesuit schooling had given him, replied, “I have learnt to arrange things in such a way that they become easy to survey and judge.” We, too, learned to survey and judge, but we learned a great deal more through the Jesuit
background of the Law School. Jurisprudence, a required course, was, in fact, thinly disguised Jesuit philosophy. No current course in professional ethics can hope to approach an understanding of the moral, ethical, and human values demanded of the legal profession as that course did. "I learnt the tremendous ethical responsibility placed upon the bar and bench and that what I stood for throughout my professional life would affect my community and profession far longer than it would affect me."
FEW remember, besides possibly those of us who were there, that in the early 1930's, the Law School had an evening session at Fordham's Rose Hill Campus in the Bronx. In those days there were morning, afternoon, and evening sessions of the Law School at its downtown location—the Woolworth Building. Doubtlessly it was the Great Depression, with its consequential economic dislocations, that required more and more putative Law School students to seek full-time employment, and caused a decrease in enrollment in the morning and afternoon sessions as well as an increase in enrollment in the evening session in the middle 1930's. Limited classroom space at the Woolworth Building proved inadequate for the accommodation of those who sought admission to the evening session. To relieve the pressure, the Law School instituted an additional evening session at Rose Hill.

All students had twelve hours of class each week, taking the same courses. There were no electives. Those who attended the evening sessions had class each Monday and Wednesday from 6:00 p.m. to 9:00 p.m. and from 6:00 p.m. to 8:00 p.m. each Tuesday, Thursday, and Friday.

I was one of sixty men who entered the first year class in the evening session on the Rose Hill Campus in September 1933. The very few women in the Law School's student body in those days were enrolled in one of the sessions at the Woolworth Building. About half of the sixty had graduated from college the previous June, while the rest were men who had been out of college for one or more years and whose entrance into Law School had probably been delayed for economic reasons. There was no such thing as a Law School Aptitude Test in those days. All one needed to be accepted for enrollment was an undergraduate degree from a recognized college or university, and, of course, the tuition. With the exception of a retired Army officer who died during the first semester, all my classmates had full-time employment. They were firemen, policemen, subway guards, teachers, bank tellers, and clerical employees in Federal, State, or City offices. In rare cases, students such as myself were clerks in law offices. The average salary for law clerks then was the princely sum of twenty-five dollars per week!

Our classes were held in the Biology Building, which was entered from Fordham Road directly opposite Theodore Roosevelt High School. The library of the Law School, modest in size and staff, was maintained at the Woolworth Building. The sole amenities available to us were restrooms and a single coin-box telephone. The adminis-

* Chairman of the Board, Manhattan Savings Bank; Governor of the State of New York, 1974; Class of '36, Fordham Law School.
The full-time faculty members of the Law School who wended their way to the Bronx to teach us were Professors John F.X. Finn (New York Practice), George Bacon (Criminal Law and Wills), Eugene Keefe (Personal Property and Agency), and Thomas L.J. Corcoran (Sales). Professor Wormser came up one evening to lecture on the Dartmouth College case. All our other teachers, who were equally capable, were part-time faculty members. Some of them also taught some of the day-time courses at the Woolworth Building. They included, among others, E. Borgia Butler (Trusts), his brother-in-law and law partner, Raymond O'Connell (Domestic Relations), Thomas Kerwin (Suretyship), and Thomas Hennessy (Equity). The latter reduced our number by 25% at the end of our second year through the failing grades he awarded at the completion of his full-year course.

Two very significant events occurred during our time in the Law School. One was the initial publication of the Fordham Law Review. The other was responsible for the demise of the evening session at Rose Hill. The Law School had attained a “Class A” rating from the accrediting committee of the American Bar Association, meeting all of the standards for such accreditation except one. The students in Fordham’s evening classes carried the same schedule as those enrolled in the day-time sessions and finished their courses in the same three year period. The A.B.A., however, required that a “Class A” law school conduct evening session classes nine hours a week over a four year period rather than twelve hours a week over a three year period. Dean Wilkinson decided that conformance with this requirement and Fordham Law School’s receipt of a “Class A” rating would best serve the interests of the Law School, its student body, and its future graduates. In my opinion, his decision was a wise one.

Since at least three other New York City Law Schools continued to offer a three year evening course, the enrollment of first year classes in the evening sessions at Fordham Law School plummeted following that decision in 1935. Because there was no longer a need for evening sessions on the Rose Hill Campus after those who had entered there in September 1934 completed their course of study, it was discontinued in June 1937.

Probably because we were an autonomous group, relatively small in number and geographically separated from the bulk of our classmates, our 1936 graduates of the Rose Hill evening session have
maintained a loose Class organization, which had its inception at a dinner on our Tenth Anniversary. We have had a Reunion Dinner almost each year since then, but our number has dwindled to sixteen at last count.

Although we seemed to be an appendage to the Law School, we had and have the same loyalty to the Law School as our contemporaries. In addition, we share with them and all the students and graduates of Fordham Law School the same sense of pride in the recognition that our Law School has earned as one of the very finest in the Nation.
EVENING CLASSES AT FORDHAM LAW SCHOOL: 1922-1925

LOUIS J. LEFKOWITZ*

In January 1921, I graduated from the High School of Commerce in New York City. Since an applicant had to be eighteen years of age to enter law school, I had to wait a year and a half to begin my attendance at Fordham Law School evening classes in September of 1922. In the meantime, I worked as an assistant bookkeeper.

While attending Fordham, I had a full-time job as a law clerk in a law office at 15 Park Row, at a weekly salary of five dollars. The hours in the evening class at that time were from 6:00 p.m. to 9:00 p.m., after which I grabbed a hasty supper at the Horn & Hardart Restaurant, just across the street from the Woolworth Building in which the Law School was then located. After finishing my meager fare, which usually consisted of a sandwich or a vegetable plate and coffee, I acted as a process server, serving summonses and subpoenas for one dollar apiece. I often had to make hour-long trips to effect service, not knowing whether the defendant or witness would be at home. Many times, no one was home. No service meant no earnings and lost time. The time for performing my law school assignments on weeknights was limited to the hours between 11:30 p.m. and about 2:00 a.m.; only part of my time on Saturdays and Sundays was available for studying because in those days, law offices were open on Saturdays.

During my first year as a law clerk, I informed my employers that I could take dictation and type, having had both these subjects in high school. They agreed that not only would I perform the duties of a law clerk, but I would fill-in as a stenographer/typist. For this double duty my salary was increased to eight dollars per week. I worked in that law office for the three years that I was at Fordham Law School.

During my attendance at the Law School, the tuition was $150 during the first year and $180 in the third year. I received an excellent education at Fordham and also had many wonderful colleagues, some of whom I still see from time to time. I was extremely fortunate to have, among others, the following members of the faculty as professors: John T. Loughran, who later served as the Chief Judge of the Court of Appeals, I. Maurice Wormser, Editor of the New York Law Journal, Dean Ignatius M. Wilkinson, John A. Blake, Member of the Board of Law Examiners, Joseph F. Crater, Francis X. Carmody, well-known author of Practice and Procedure, and Henry M.J. Man-

nix. With all due respect to faculties at other law schools, both past and present, it would be very difficult to find a teaching staff that could compare with the faculty that I was honored to have.

Unfortunately, a student who attended school in the evening had very little time for student or school activities. When that student worked during the day, attended school in the evening, and then went out to serve summonses afterwards, he barely had time to prepare the next day’s assignments before collapsing into bed. I was, however, able to participate in one extracurricular function. My evening class organized a club called the “Tortfeasors” and its President was Charles E. Murphy, who later became a Justice of the Appellate Division, Second Department. Professor Loughran was the Honorary President of the Club and attended the club dinners as did other members of the faculty. The dinners were continued for many years after graduation in 1925. As the years went by, each dinner would end earlier than the year before. We were getting older and retirement hour grew earlier.

My interest in Fordham Law School has never ceased. I have always attended the annual anniversary luncheons and other functions, and enjoy meeting new faculty and recent graduates. My association with Fordham now goes back almost sixty years. I shall always cherish the association and value the start which the Law School gave to me.
A LONG ASSOCIATION WITH FORDHAM

WILLIAM R. MEAGHER*

IN 1924, when I entered Fordham Law School in the Woolworth Building, it was a part-time school, with a part-time faculty and a part-time student body. Three “Divisions,” Morning, Afternoon, and Evening, met for two hours three days, and three hours two days a week. These classes, attended by students working their way at part-time or full-time jobs, were taught by men as there were no female faculty members. Because there were only three full-time professors, most of our teachers came to the classroom directly from a law office or courtroom.

The faculty, although small, was a distinguished one. It included John T. Loughran (later Chief Judge of the New York Court of Appeals), John A. Blake (later a New York State Bar Examiner), Francis X. Carmody (author of the famous work on New York Practice), John Finn, who subsequently succeeded the then Dean, Ignatius Wilkinson, and the memorable I. Maurice Wormser.

There were no electives; the three-year curriculum consisted of twenty-seven required courses. No Law Review or Urban Law Journal or Moot Court existed. The library was small, only fairly stocked, and sparsely attended.

Students were required to occupy assigned seats, and absences—unoccupied seats—were recorded. Three unexcused absences from a course caused failure in that course. The case system was ritually followed throughout the three-year program. The student stood and stated the facts and principles of the case; class discussion followed and ended with the professor’s statement of the law, generally and in New York. This, of course, took time—a case book was rarely completed—and a course ended with lectures on uncovered material.

Examinations followed a few days after classes closed—January Finals in one-semester courses and June Finals in full-year programs. Commencement on the Bronx campus in June preceded the Bar examinations by about three weeks. There was no Placement Office and graduates found positions on their own.

When I joined the Faculty in 1928 (remaining until 1945), additional evening sessions had just started on the Bronx campus, continuing there for several years. In 1943, the school moved from the Woolworth Building to 302 Broadway, occupying the entire three-floor office building.

The Great Depression hit in 1929, but did not reduce Law School attendance materially for college graduates could not find employment and some took up study of the Law as post-graduate work.

* Of Counsel, Skadden, Arps, Slate, Meagher & Flom; Class of '27, Fordham Law School.
During the war years, however, classes were decimated by military enlistments and the draft. To enable students to earn their degrees sooner, courses were accelerated and summer recesses eliminated. Evening classes were taught in a “black-out.” Many studied in uniform and some were called up before completing the full course.

Nevertheless, the Law School prospered. In the period 1928-1945, it advanced substantially in scholastic standing and prestige, lifting its standards for both entrance and a degree, and obtaining accreditation.

In 1974, I rejoined the Faculty of eighty-two members (thirty-four full-time and forty-eight adjunct professors), lecturing to full-time students in the Day Division over a three-year program and to those in the Evening Division over a four-year period. The curriculum now includes eleven required courses in basic subjects such as Contracts, Torts, and Property, and some seventy elective courses ranging alphabetically from Accounting for Lawyers to Visual Arts. Included in the curriculum are a number of clinical programs, in which qualified students are enabled to handle actual cases under the supervision of experienced lawyers. The *Fordham Law Review* and the *Fordham Urban Law Journal* are being cited authoritatively by the courts and the Moot Court team has won many honors, including a victory in the National Moot Court Competition.

There are now a number of Endowed Chairs and a recently established Distinguished Professorship. Scholarships have been substantially increased. A Placement Office under the direction of a full-time professional director assists graduates seeking positions, whether permanent or temporary, provides career counseling, and advises candidates for judicial clerkships.

In short, one with my memories of over a half-century need only visit Lincoln Center and read the latest Law School Bulletin to realize that the Fordham Law School of today is not only a vastly improved, but entirely different, institution. Some may say I was born fifty-five years too soon. Each time I visit the Law School I’m inclined to agree. But, on second thought, had I arrived later I would have missed being an eyewitness and a part of its splendid growth toward greatness.
LAST summer on the Island of Nantucket, I came upon a native sitting on a rock and staring solemnly at a distant lighthouse. When I asked him what he was doing, he responded: "Lighthouse, no good for fog. Lighthouse, whistle, blow, ring bell, flash light, raise hell. But fog come in just the same."

This profound perception has universal appeal to all ages and to all professions. To me, however, the lighthouse is the Law School and, try as I may, I cannot shed the notion that the problems I face today at the Law School are no different from those faced by Paul Fuller seventy-five years ago. They are probably no different from those that will be faced seventy-five years hence by a dean whose mother has not yet been born.

The twenty-first century is barely twenty years away. The year 2000 will see a profession radically different from the one that existed when I became Dean. In 1970 there were about 325,000 lawyers in this country. In 1979 alone, 46,000 new lawyers were admitted bringing the total well above one-half million. By the year 2000, therefore, the Bar will have to support in excess of one million lawyers.

It used to be said that where there was one lawyer in a town, he was impoverished, but where there were two, both were rich. Whether this canard has any validity will surely be tested as the nation's law schools continue to produce vast numbers of lawyers with that lean and hungry look. Perhaps Prepaid Legal Services will have something to do with the answer. It will not be long before ninety percent of Americans live in cities. The success of the Fordham Urban Law Journal reflects the deepening interest of our profession in the problems that are peculiar to an urban society. Our curriculum will have to be refined to focus on the difficulties of municipal financing, mass transportation, and public employment. We have long visualized our society as a pyramid with young, productive workers at the base supporting a small, retired corps at the top. In twenty or thirty years, this pyramid may well be inverted, making new demands on the estate planners and the tax consultants, to say nothing of ERISA.

Environmental Law, which only ten years ago was an academic novelty, has already produced a separate CCH service. Water rights, oil, and gas law will be making increased demands on the law school curriculum in the near future. The growth of the computer Leviathan will cut a broad swath across contract and tort law, not to mention antitrust law (with a nod to the pending IBM and AT&T cases). Simi-
larly, advances in the biological sciences will require re-evaluations of basic constitutional values, as well as the orthodoxies of family law.

I have little doubt that within the next twenty years we will have followed our medical brethren through clinical education into specialization. Precisely how the law schools will train specialists—if indeed they can be expected to—remains unclear; but it is certain that the move by the organized bar toward specialization will have a ripple effect in the law schools. Unless law school education is extended beyond the traditional three years—an unlikely prospect despite its attractiveness to university fiscal planners—law school faculties will have to become even more selective in their coverage. If Justice Holmes could describe his 1864 legal education “as a ragbag of details,” there is a clear and present danger that legal education in the year 2000 may degenerate into a nightmare of pother.

I do not perceive this, however, as a serious risk at Fordham. We have a tradition of following Sir Edward Coke’s sage counsel: “Non multa sed multum—Not many things but much.” The Fordham Law School faculty has never pursued the will-o-the wisp to teach everything a lawyer ought to know, but rather has sought to impart those essential skills that no legislature can repeal. A sound legal education is what is left after what has been learned has been forgotten. Fordham has a rich history, reaching back through Mulligan and Wilkinson to Paul Fuller, of providing such an education, and I am confident that our tradition will survive through the bumbling of the current Law School administration.

Within a few years we will add substantially to the Law School building. This will enable us to accommodate our 1,100 students and, if dormitory facilities are constructed, will enhance our appeal to students from all over the nation. Meanwhile, we shall continue to make every effort to attract the best students from all walks of life. This diversity of talent and intellect will permit us to turn out that unique product we have come to know as the Fordham Lawyer.

As we begin to plan our Centennial celebration, I will make no promises now as to what we will do, for I believe that we can do far more than we can now promise.
SOME FURTHER REFLECTIONS ON THE PROBLEM OF ADEQUACY OF TRIAL COUNSEL

WARREN E. BURGER

FOR the past half dozen or more years lawyers, judges, and law school professors have engaged in a vigorous and productive debate over what is the appropriate basic training for those who seek to become advocates in our courts. After the vigorous initial discussion to assess the dimensions of the problem, a broad consensus has now emerged that a significant problem concerning the quality of a substantial number of lawyers' performances in the trial courts does indeed exist. Some of the factors stimulating this debate were observations made in the Sonnett Memorial Lecture which I gave at the Fordham Law School in November 1973.¹ Some were prompted by an erroneous news report from London concerning statements I made to a Royal Commission considering changes in the bifurcated barrister-solicitor profession long used in England.² These developments prompted me to accept an invitation to advance some further reflections, in the journal in which the Sonnett lecture had been published, on what has developed since 1973. I will also suggest some additional steps that should be taken if we are to achieve the goal of professional adequacy for lawyers who appear in our trial courts.

I

Upon reflection it is fair to say that American legal education has been radically restructured only twice during our history. Now, there are signs that perhaps a third such restructuring may be in progress—or at least some major and highly desirable changes are on the horizon.

The first great restructuring was movement of the primary setting for legal education from private study in the law office to a formal course of study in the university. The practice of "reading law" in law offices essentially had been an apprenticeship in the tradition of medieval craft guilds. This paralleled the training of doctors through most of the nineteenth century.

Until early in this century, an aspiring lawyer would work in the office of a practicing attorney for several years, performing tasks under his supervision while studying the standard legal treatises. In some states, courts or examining bodies set standards and monitored the process. The pupil would then present evidence of the "apprenticeship" training to a court or committee and be admitted to practice. The admission process varied from state to state.

This method of learning law permitted the acquisition of considerable practical knowledge as the pupil, in effect, understudied the master, and performed during his studies much of what "paralegals" do today. This approach sometimes led to haphazard and incomplete knowledge of basic legal concepts for all but the brightest and most ambitious students or the fortunate who had their tutelage under an able and conscientious practitioner. The reading of law, however, risked inadequate training in legal theory that modern law schools perform so well.

Legal education shifted to universities because of a combination of factors apart from an enlarging demand for skilled lawyers. These included lack of oversight by courts or the early bar associations; a perceived inadequacy in the breadth of law office education; resentment over the hegemony exercised by some lawyers and law firms over legal instruction; and, finally, a growing view that university legal training was more prestigious. The first "law schools" such as George Wythe's at William and Mary College and Tappan Reeve's at Litchfield were basically expansions of the law office teaching of the eighteenth century. Instruction in the early law school came primarily from black-letter legal treatises and an early form of present-day "seminars" that were given by prominent judges and practitioners. We see, therefore, that until well into the nineteenth century full-time professional law teachers were a rarity. The custom was law school instruction, which typically lasted from one to two years, combined with practical law office instruction.

The second major shift in American legal education can be attributed to the pioneering efforts of Professor Christopher Columbus Langdell during his twenty-five years as the Dean of Harvard Law School. Langdell introduced what came to be known as the "case method" of legal study—finding the law through an inductive analysis of reported cases, almost exclusively appellate opinions. The case method, a significant change from the prevailing method of lectures coupled with rote memorization of black-letter rules of law, refined the intellectual and analytical skills of generations of law students. Beyond doubt, it has been a positive factor in training students in

4. See A. Reed, Training for the Public Profession of the Law 128 (1921).
5. Langdell was the Dean of Harvard Law School from 1870 to 1895.
legal analysis and theory. Believing that "law is a science" with "all the available materials of that science . . . contained in printed books," Langdell pointedly excluded all the traditional "methods of learning law by work in a lawyer's office, or attendance upon the proceedings of courts of justice." Although the case method was indeed a tidy, orderly mode of teaching legal analysis, it was, in a sense, teaching in a vacuum, not fully responsive to the ultimate objectives. "What qualifies a person to teach law," wrote Langdell, "is not the experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of causes—not experience, in short, in using law, but experience in learning law . . . ." This utterance draws the issue clearly; I submit it missed the target.

Whether Langdell himself ever characterized his approach to teaching as the "case method" is irrelevant. The reference to "case" at least implied study of actual cases; this was not so. A more appropriate description of Langdell’s concept would be the "appellate" method because it did not deal with the crucial aspect of a "case" which is the employment of facts as building blocks. Cases exist only by virtue of facts which give rise to problems. A case begins with facts, usually disputed facts, and moves to the inferences properly drawn from more facts. Langdell began when the facts were established, the factual dispute resolved. This, I suggest, explains why so many extraordinarily bright law graduates tend to be indifferent to and impatient about facts.

Although highly controversial at first, virtually all American law schools came to follow Langdell’s innovations. Even as this occurred, however, his contemporary critics warned that severance of legal education from the mainstream of the legal profession—by eliminating the practical influences of both the lawyers’ daily grist and instruction from practitioners and judges—might result in future generations of lawyers well trained in legal theory but ill-equipped in dealing with practical matters on their entry into practice.

7. Id. at 908. See also A. Sutherland, The Law at Harvard 175 (1967) quoting Record of the Commemoration, November Fifth to Eighth, 1856, on the Two Hundred and Fiftieth Anniversary of the Founding of Harvard College 97, 98 (1887).
8. See A. Sutherland, supra note 7, at 187-90 (quoting letter from Ephraim Gurney, Dean of the Faculty of Harvard College, to the President of Harvard, Charles Eliot). According to Professor Sutherland, this letter was written “sometime in the spring of 1883.” Id. at 186. The observations of Dean Gurney have been confirmed by a recent survey of 4,000 law graduates from the years 1955, 1963, and 1970. Baird, A Survey of the Relevance of Legal Training to Law School Graduates, 29 J. Legal Educ. 264 (1978).
When medical and legal training moved to the universities, a significant difference arose. Medical education remained largely in the hands of practicing physicians and surgeons, while legal education passed to professional teachers, few of whom had been practitioners. Langdell's method trained students to train others in legal theory and did it very well in that confined orbit. Had medical education pursued this course we might well have wound up with doctors skilled in anatomy and pharmacology but less so in diagnosing and treating common ailments. Clients, like patients, need practitioners rather than philosophers or pedagogues. That these observations may annoy some in the legal profession is a risk worth taking to encourage renewed reappraisal of Langdell and his critics.

For almost a century, Langdell's model has dominated American legal education. Criticism of Langdellian patterns did not totally abate, however, notwithstanding the well deserved prestige of Harvard Law School, one of the great centers of legal education. In 1921, Alfred Z. Reed remarked that "[t]he failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly."9 Legal education, we can now see clearly, diverged from all the trends in the teaching of medical students. One of the last—and of the great—products of the law office/law school-educated advocates, Justice Robert H. Jackson, commented that "[i]f the weakness of the apprentice system was to produce advocates without scholarship, the weakness of the law school system is to turn out scholars with no skill at advocacy."10 In a 1950 address at Stanford University Law School, Jackson called for a "forward step" in both legal aid and "legal clinic[s]."11 Such clinics would give law students the opportunity to gain needed instruction and experience in the practical art of trial advocacy and provide legal services for the indigent.12

During the 1960's some changes in legal education began to emerge as a result of growing concern about the inadequacy of legal services available to the poor. While Congress addressed this need through the Criminal Justice Act of 196413 and the OEO Legal Services Programs (later the Legal Services Corporation),14 the law schools demonstrated an increased interest in approaching traditional

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9. A. Reed, supra note 4, at 281.
11. Id. at 58.
12. Id.
subjects such as real property and contracts from the standpoint of the urban tenant and the consumer. Emphasis on "the problems of the little man," (consumer financing as a good example) came to the fore. A number of clinical programs were established during the 1960's that permitted second and third year law students to appear in court, occasionally under the guidance of a member of the Bar. The Ford Foundation created the Council on Legal Education for Professional Responsibility (CLEPR) in 1968 for the purpose of financially assisting law schools in the inauguration of programs of clinical education.\(^\text{15}\)

During the 1960's I stressed the need to begin to prepare students by practical training especially in trial advocacy in law schools. I contended that, regardless of the student's career goals, one must understand the mechanics of the adversary process to be a "whole lawyer." In lectures, speeches, and articles,\(^\text{16}\) I emphasized that the law schools' insistence on single-minded, rigid, and universal adherence to the Langdellian approach was causing them to fail in a basic duty of providing society with people-oriented and problem-oriented counselors and advocates. I suggested that one possible solution to this problem which deserved consideration was to utilize the third year of law school as a kind of internship period during which qualified practitioners and professional educators would instruct students in the elements of advocacy and trial preparation.\(^\text{17}\)

My concerns,\(^\text{18}\) and those of many others, led to the formation of the Task Force on Trial Advocacy by the American Bar Association. Its Chairman, the late Judge William B. Jones of the United States District Court for the District of Columbia, had been an active trial practitioner before going to the Bench. Reporting in 1971, that Task Force called for a remedy to the severe shortage of trained trial advocates.\(^\text{19}\) In 1972, the A.B.A., the American College of Trial Lawyers,

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15. See Marden, CLEPR: Origins and Program, in Clinical Education for the Law Student 3, 8 (1973). CLEPR was terminated in 1979 after its funding from the Ford Foundation ended.


and the Association of Trial Lawyers of America jointly responded to the Task Force by sponsoring the creation of a new advocacy college, the National Institute for Trial Advocacy (N.I.T.A.). N.I.T.A.'s purpose was threefold: (1) to train lawyers, especially young lawyers, in advocacy; (2) to develop methods and techniques for teaching and learning the skills of the effective professional advocate; and (3) to train teachers for service in law schools and in continuing legal education programs, stimulating the creation of courses and programs in trial advocacy, and aiding in their development. N.I.T.A. has made a significant contribution to improving the quality of trial advocacy.

There were other more modest developments during the early 1970's. Trial advocacy programs were inaugurated at Cleveland State University School of Law, McGeorge School of Law, Hofstra Law School, and the University of Illinois School of Law—to mention only a few. Harvard, of course, had long made a limited amount of practical exposure available to those who wanted it. By 1973, student practice rules for third-year students had been adopted in forty-two states and the District of Columbia, as well as by eleven federal district courts.

II

The Sonnett Memorial Lecture in 1973 advanced the thesis that three principles could be gleaned from the English legal experience, principles applicable to our own system of legal education. First, lawyers, like doctors, cannot be equally competent for all tasks in an increasingly complex society. Second, legal educators could—and should—develop some system whereby students or new graduates who desire, or think they may pursue, specialization in trial work could learn its basic elements under the tutelage of skilled advocates.

20. See generally The National Institute for Trial Advocacy, An Intense Program On Trial Advocacy (1980). Funding for N.I.T.A. was obtained through the generosity of the Council on Legal Education for Professional Responsibility (CLEPR), the Law Enforcement Assistance Administration (L.E.A.A.), the Practicing Law Institute, and the International Society of Barristers.


23. Special Skills, supra note 1, at 227.
and trial judges, rather than by trial and error at the expense of their
clients and as a burden on the courts. Third, that ethics, manners,
professional behavior, and civility are indispensible ingredients, the
lubricants of the inherently contentious adversary system of American
justice; this is a crucial element in legal education which must be
understood by students and should be taught beginning the first day
in law school.\(^2\) While I did not and do not advocate an elite,
barrister-like class of trial lawyers or a British-type, bifurcated profes-
sion, positive steps are imperative to promote advocacy skills in those
attorneys who choose to represent clients in the courtroom.

In the Fordham Lecture, I speculated upon the possible causes of
the inadequate courtroom performances of far too many American
lawyers. The first, and perhaps overriding, cause was the traditional
insistence that every person admitted to the bar be treated as qual-
ified to give effective assistance on every kind of legal problem. That
naive assumption is no more justified than the supposition that every
medical graduate is competent to perform every type of surgery—
and on the day of graduation!\(^2\)

A second cause was the failure of the law schools to provide
adequate and systematic programs by which students would focus on
the basic elements of advocacy. I reiterated that some consideration
be given to having a two-year program to replace the present three-
year format of law school. For those who aspire to be advocates, the
third year would be used to concentrate on basic training in advocacy
under the guidance of practitioners, trial judges, and professional
teachers skilled in the teaching process. Following the third year,
ovice advocates would enter a pupilage period during which they
would assist experienced trial lawyers and directly participate in trials
with them.\(^2\) There was nothing very new in this, for some states
had employed this method until forty or fifty years ago. If this is
"turning back the clock," it is a clock that needs turning back so that
students may learn from experience.

A contributing cause to poor advocacy was the inability of too many
offices of prosecutors and public defenders to provide the same sort of
apprenticeship or training period which many of the larger law firms
have long employed. The on-the-job training—without more—that
many prosecution and public defender offices rely on as a means of
training novice advocates is unconscionable when it comes at the ex-
 pense of their hapless clients who assume that the lawyer's license
has meaning.\(^2\)

\(^{24}\) Id. at 229-30.
\(^{25}\) Id. at 231.
\(^{26}\) Id. at 232.
\(^{27}\) See, e.g., Bazelon, . . . And Justice for All, 35 NLADA Briefcase 172 (1978);
In the Sonnett Lecture, I indicated that some system of specialist certification, paralleling that in the medical profession, is the best solution to the problem of inadequate trial advocacy. I proposed a four-point program as a first step in that direction:

First: Face up to and reject the notion that every law graduate and every [licensed] lawyer is qualified, simply by virtue of admission to the bar, to be an advocate in trial courts in matters of serious consequence.

Second: Lay aside the proposals for broad and comprehensive specialty certification [in all fields] (except where pilot programs are already under way) until we have positive progress in the certification of the one crucial—[and most visible]—specialty of trial advocacy that is so basic to a fair system of justice and has had recognition in the common law systems.

Third: Develop means to evaluate qualifications of lawyers competent to render the effective assistance of counsel in the trial of cases.

Fourth: Call on the American Bar Association, the Federal Bar Association, the American College of Trial Lawyers, the American Association of Law Schools, the Federal Judicial Center, the National Center for State Courts and others to collaborate in prompt and concrete steps to accomplish this first step in a workable and enforceable certification of trial advocates.\(^{28}\)

There were vocal critics who suggested that those proposals would erect new barriers working inequitably against people already disadvantaged and underrepresented.\(^{29}\) While intended constructively, such criticisms missed a central point. It is precisely those members of society who are already disadvantaged whose interests are most likely to be prejudiced by incompetent trial advocates.\(^{30}\) The privileged can afford the best lawyers and can seek them out. The resulting prejudice runs the gamut from a clearly inappropriate criminal judgment or sentence resulting from an attorney's lack of skill\(^{31}\) to an advocate's failure to recognize disguised usury in the installment purchase of a washing machine or kitchen stove.\(^{32}\) The profession owes the public a high duty to insure that every segment of society has access to effective and timely assistance of counsel; it cannot be a luxury only for people who can afford law firms that have internalized the training of their novice advocates.\(^{33}\)

III

Some challenged the thesis of the Fordham Lecture and ques-

\(^{28}\) Special Skills, supra note 1, at 240-41.

\(^{29}\) See, e.g., Frankel, Curing Lawyers' Incompetence: Primum Non Nocere, 10 Creighton L. Rev. 613, 626 (1977).

\(^{30}\) See, e.g., Special Skills, supra note 1, at 231, 233, 236.

\(^{31}\) See id. at 236.

\(^{32}\) Address to Phi Alpha Delta, supra note 16, at 8.

\(^{33}\) Special Skills, supra note 1, at 231.
tioned the seriousness of the problem of inadequate trial advocacy. My own tentative conclusions were drawn from forty years of close observation, conversations with hundreds of judges and trial lawyers throughout the country, and review of literally thousands of trial records. Yet, while many acute observers agreed that it was a serious problem, there were no studies when available that would satisfy even minimal criteria appropriate to the need. This debate was to provoke a series of studies and surveys.

The Committee on Qualifications to Practice before the United States Courts in the Second Circuit conducted the first poll of federal judges. The judges in the Second Circuit thought that more than 7% of the attorneys who had appeared before them from April 1976 to April 1977 were incompetent. This was useful but inadequate as a "study" of the problem. Four later studies defining the scope of the problem of inadequate trial advocacy were released in the late Seventies. Though the results differed slightly, the studies, taken collectively, provide positive documentation for the position that a serious problem indeed exists and demands a remedy.

In March 1978, the Federal Judicial Center released the results of a survey of nearly 400 federal trial judges. Of those responding, 41.3% believed that the quality of advocacy in their courts was a "serious problem." A majority of these judges, as well as of a sampling of experienced trial lawyers, stated that the consequence of inadequate trial performance meant that the interests of the client were not fully protected.

The American Bar Association published, in June 1978, the results of a March 1978 telephone survey of 599 lawyers chosen at random. Of those consulted, 60% favored a specialty certification requirement for trial advocates; 83% felt that compulsory trial advocacy training in law school should be mandatory or would at least be "somewhat helpful;" 54% of the respondents from cities with a population in excess of one million agreed that lack of trial competence was a serious problem compared with 41% of the national sample.

36. Lawscope, Just How Good (or Bad) are Federal Trial Lawyers?, 63 A.B.A.J. 1525 (1977) [hereinafter cited as Just How Good].
37. A. Partridge & G. Bermant, The Quality of Advocacy in the Federal Courts 16 (1978). The judges, as a whole, rated 25% of the performances by trial lawyers appearing before them as barely adequate or worse with 8.6% of these performances considered inadequate. Id. at 13.
38. Id. at 18.
The Law School Admissions Council sponsored perhaps the most carefully structured study.\footnote{40} Those responses raised grave questions about law school training. Of those lawyers who responded who said that they did trial work,\footnote{41} 55.2\% indicated that their law school training had proved either not useful or only somewhat useful, and 19.6\% indicated that they had received no instruction at all in trial advocacy.\footnote{42} Out of the 1,600, 77.5\% responded that law school training had been either not helpful or had played no part in preparing them to perform such elementary functions as interviewing witnesses; 79.7\% felt that law school had not prepared them to interview clients; 57.9\% indicated that they had not been prepared to investigate facts; 68.6\% felt that law school had not prepared them to counsel clients; 77.3\% indicated that they had no training to prepare them to conduct negotiations; 44\% felt that their education had not prepared them to draft legal documents.\footnote{43} Not surprising! How many practitioners experienced in these areas were on law faculties from 1955 to 1970?

The fourth empirical study on the subject of lawyer competency released in 1978 was sponsored by the American Bar Foundation.\footnote{44} A total of 1,442 state and federal judges of trial courts of general jurisdiction responded to questionaires;\footnote{45} 87\% of those responding rated at least 50\% of the attorneys appearing before them in the past year as competent.\footnote{46} Only 4\% of the judges rated all of the attorneys who appeared before them as competent.\footnote{47} Of these 1,442 trial judges, 77\% believed that law school training could be an effective agency for insuring the competence of the trial bar; 67\% favored mandatory apprenticeships.\footnote{48} 

These studies, inexact as they may be, are, like Emerson's mouse-trap, significant because they are the first. They have added greatly to our information. Each approached the problem of competency from a somewhat different perspective, but the studies tend to fit together, like pieces of a puzzle, to form an unmistakable picture of a

\begin{footnotes}
\footnote{40} Baird, supra note 8. Questionnaires were sent to 4,000 graduates of the law classes of 1955, 1965, and 1970; 1,600 responded. Id. at 264, 267.
\footnote{41} This group consisted of 47.4\% of the 1,600. Id. at 270.
\footnote{42} Id.
\footnote{43} Id. at 273. The Federal Judicial Center Study had cited "Proficiency in the Planning and Management of Litigation" and "Techniques in the Examination of Witnesses" as the areas of competence in which the District Judges and trial lawyers surveyed felt improvement was most needed. A. Partridge & G. Bermant, supra note 37, at 46, 47.
\footnote{45} The judges who did respond comprised only 26\% of the judicial pool that received the survey. Id. at 110.
\footnote{46} Id. at 116.
\footnote{47} Id.
\footnote{48} Id. at 128–29.
\end{footnotes}
growing recognition by all parts of our profession—the bench, bar, and academia—that the existence of a “serious problem” of the competence of trial counsel is directly related to the amount of attention given to beginning training for trial advocacy-related subjects in law school. More important is the impact on the “consumers” who suffer the most severe consequences. The very notion that the law of evidence is denigrated to an “elective” status on the theory that lawyers in practice will learn it by some osmosis can find a parallel in the notion that learning human anatomy should be an “elective” in medical schools since doctors will find out about anatomy when they operate on patients!

IV

Once the scope of the problem of competence was documented, even if imprecisely, the next question was “What shall we do about it?” The United States Court of Appeals for the Second Circuit under the leadership of Chief Judge Irving Kaufman was among the first to act. He had indicated his serious concerns with inadequate trial advocacy in an address to the New York County Lawyers Association. Judge Kaufman appointed a committee on Qualifications to Practice Before the United States Courts in the Second Circuit that was composed of trial lawyers, judges, and academics from within the circuit. Headed by Robert L. Clare, Jr., a lawyer with long experience in litigation, the committee’s mission was to examine the problem of inadequate trial advocacy in the District Courts of the Second Circuit and recommend practical solutions.

After in depth interviews with approximately forty judges in that circuit, the Clare Committee, in early 1975, found a consensus

51. The Clare Committee noted developments in Indiana where in response to steadily declining scores on the bar examination, the Indiana Supreme Court in 1975 adopted Admission and Discipline Rule 13. That rule conditions eligibility to take the bar examination upon successful completion of 54 credit-semester hours of instruction in fourteen subject areas. Rule 13 has been criticized for restricting the ability of law schools to restructure their curricula so that greater emphasis may be placed on clinical or classroom instruction in trial skills. As a practical matter, however, most law students elect many of the mandated courses when the choice is open. Rule 13 was not specifically designed to address the problem of inadequate trial performances because a course in trial advocacy was not required. See Boshkoff, Indiana’s Rule 13: The Killy-Loo Bird of the Legal World, Learning and the Law, Summer 1976, at 18; Cutright, Cutright & Boshkoff, Course Selection, Student Characteristics and Bar Examination Performance: The Indiana Law School Experience, 27 J. Legal Educ. 127, 128 (1975); Gee & Jackson, Bridging the Gap: Legal Education and Lawyer Competency, 1977 B.Y.U. L. Rev. 695, 909; Givan, Indiana Rule 13. It Doesn’t In-
among the judges that there was a clear need for improvement in the quality of trial advocates. The Committee recommended that successful completion of courses in five subject areas be a prerequisite to admission before the courts of the Circuit, urging law schools to place a special emphasis on trial advocacy training. The Clare Committee also suggested that candidates for admission to the trial bar of the Second Circuit be required to have participated either in the preparation of four trials (of which two must have been in federal court) or observed six trials (three of which must have been in federal court). These proposals were approved in principle by the Circuit Judicial Council in 1975 and were later adopted by the Northern District of New York, the District of Vermont, and the United States Court of Appeals for the Second Circuit.

The stage was then set for action by the Judicial Conference of the United States which authorized the Chief Justice to appoint a special Conference Committee to study and report with recommendations. The Committee to Propose Standards for Admission to Practice in the Federal Courts included twelve federal judges (ten of whom were trial judges), six practicing lawyers, six law school deans and professors, and four law student consultants. The Committee, headed by Chief Judge Edward J. Devitt of the United States District Court for the Northern District of Illinois, recommended that successful completion of courses in four subject areas be a prerequisite to admission before the courts of the Circuit, urging law schools to place a special emphasis on trial advocacy training. The Clare Committee also suggested that candidates for admission to the trial bar of the Second Circuit be required to have participated either in the preparation of four trials (of which two must have been in federal court) or observed six trials (three of which must have been in federal court). These proposals were approved in principle by the Circuit Judicial Council in 1975 and were later adopted by the Northern District of New York, the District of Vermont, and the United States Court of Appeals for the Second Circuit.

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Court for the District of Minnesota, decided to approach the question of trial advocacy competence with the following goals:

1. To determine systematically whether, in the judgment of judges and lawyers, there is a substantial problem of inadequate performances among advocates in the federal courts.
2. To determine whether, in the judgment of judges and lawyers, there is a substantial problem of inadequate performance among certain segments of this group of advocates.
3. To gather opinions about the particular components of advocacy in which practitioners most need improvement.\textsuperscript{57}

After canvassing all Federal District Court judges, four regional public hearings were held to supplement the opportunity for written comments.\textsuperscript{58} The Committee unanimously concluded that there was a need to take positive steps to improve the quality of advocacy in the United States district courts.\textsuperscript{59} It made the following recommendations in the Report presented to the Judicial Conference in September 1978:

1. Minimum uniform standards of competency for attorneys in federal trial courts should be implemented by uniform rules providing for an examination in federal practice subjects and four trial experiences in actual or simulated trials.
2. Each district court should establish a performance review committee to review instances of inadequate trial performances.
3. A uniform district court student practice rule should be adopted.
4. Law schools should make available greater opportunity for students to take trial practice courses.
5. Continuing legal education programs on trial advocacy should be established.
6. District courts should sponsor federal practice programs.
7. The American Bar Association should consider making more specific the Code of Professional Responsibility as it relates to trial advocacy.\textsuperscript{60}

From the Committee hearings held on these proposals in the five cities between September 1978 and September 1979, two basic points emerged. First, our profession was not yet fully convinced that the tentative proposals, especially the written federal bar examination on

\textsuperscript{57} Devitt, \textit{Improving Federal Trial Advocacy}, 60 Judicature 491, 494 (1977).
\textsuperscript{58} The Judicial Conference of the United States, Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts, \textit{reprinted in} 79 F.R.D. 187, 193 (1978). The public hearings were held in Los Angeles, Chicago, Washington, D.C., and Boston. Transcriptions and summaries of the hearings were prepared as well as summaries of the additionally gathered written comments. \textit{Id.}
\textsuperscript{59} \textit{Id.} at 195.
\textsuperscript{60} \textit{Id.} at 189.
Federal Rules and the experience factors, were the best means of resolving the problem of inadequate trial advocacy. Second, on the positive side, a broad spectrum of the profession believed that greater emphasis should be placed upon trial advocacy in the law schools.61

When the Committee presented its final report to the Judicial Conference of the United States in September 1979, it proposed a standard that “all members of the federal bar should possess knowledge of federal practice subjects [Civil, Criminal Rules, Evidence and Local Rules] and some experience in trial advocacy.”62 The Committee also urged the Judicial Conference to support “increased emphasis in the law schools on trial skills training, including simulated trials and instruction by experienced litigators.”63 Finally, the Committee recommended “experimentation, in cooperating pilot districts, with an examination on federal practice subjects, an experience requirement, and a peer review concept.”64 It urged “support for post-law school seminars and continuing legal education programs on trial advocacy and federal practice subjects.”65

Perhaps one of the most important steps was the unanimous recommendation of the Judicial Conference that the American Bar Association consider “amending its law school accreditation standards to require that all schools provide courses in trial advocacy, including student participation in actual or simulated trials taught by instructors having litigation experience,” and encourage the bench and bar to “support the law schools in achieving the goal of providing quality trial advocacy training to all students who want it.”66 The Judicial Conference also recommended to the district courts that they (1) adopt a student practice rule, and (2) support continuing legal education programs on trial advocacy and federal practice subjects and encourage the practicing bar to attend. Thus, final action on the specific admission standards proposed by the Committee was deferred until the results from the pilot districts were known. The Conference authorized a series of pilot programs in representative districts, emphasizing that possible admissions standards could be best assessed by

61. Devitt Committee Final Report, supra note 56, at 220.
62. Id. at 231.
63. Id.
64. Id.
65. Id.
66. Administrative Office of the United States Courts, Reports of the Proceedings of the Judicial Conference of the United States 105 (1979) [hereinafter cited as 1979 Proceedings]. The A.B.A. Task Force on Lawyer Competency (Cramton Task Force) opposes using the A.B.A. accreditation standards for imposing detailed requirements on approved law schools such as specific requirements regarding clinical training. See Cramton Report, supra note 51, at 37. It does condone the reasonable use of the accreditation process to underscore the importance of skills training. Id. at 32.
evaluating a breadth of experience from different pilot programs. The Conference then created an “Implementation Committee on Admission of Attorneys to Federal Practice” to “oversee and monitor, on a pilot basis, an examination on federal practice subjects, a trial experience requirement and a peer review procedure, in a selected number of district courts that indicate a desire to cooperate in any or all of the above programs.” Judge James Lawrence King of the United States District Court for the Southern District of Florida is the chairman of the committee. Numerous district courts already have indicated interest in having their courts become pilot districts; these pilot programs will be in operation in 1981.

During the past five or more years of activity on this subject on the part of the Judicial Conference, the American Bar Association and the law schools have also been active. In August 1978, the Section on Legal Education and Admissions to the Bar of the A.B.A. announced the appointment of a task force, chaired by Dean Roger C. Cramton of Cornell Law School to consider and report on “Lawyer Competency: The Role of the Law Schools.” The Cramton Task Force reported on August 10, 1979. The Task Force Report made two truly watershed recommendations urging the law schools to offer instruction in basic litigation skills “to all students desiring it,” and to “make more extensive instructional use of experienced and able lawyers and judges, especially in structured roles in which they utilize their professional knowledge and skill.” Each of these proposals represents a profound change, pregnant with significant implications for the future. The American College of Trial Lawyers has pledged its cooperation to assist the law schools in achieving these

68. Id. at 103-04.
69. The members of the Implementation Committee were Chairman King, Circuit Judge A. Leon Higginbotham, Jr.; District Judges Edward J. Devitt, Robert E. Keeton, Morris E. Lasker, James R. Miller, Jr., William B. Sessions; and attorneys Thomas E. Deacy, Jr. and Robert W. Meserve. On the pilot districts, see King Committee: A Progress Report, The Third Branch, March 1980, at 1, 2.
70. Cramton Report, supra note 51, at 7. See also ABA Task Force to Meet Burger Complaint, 64 A.B.A.J. 1329 (1978). The members of the Cramton Task Force were Judges A. Leon Higginbotham, Shirley M. Hufstedler, and Alvin B. Rubin; Deans Roger C. Cramton (Cornell), Joseph R. Julin (Florida College of Law), President Willard L. Boyd (University of Iowa); former Dean Robert B. McKay; Professor Samuel D. Thurman (University of Utah College of Law), as well as Robert F. Hanley, former Chairman, ABA Section of Litigation; Maximilian W. Kempner, Former Chairman, ABA Section of Legal Education and Admissions to the Bar; R.W. Nahstoll, Chairman, Accreditation Committee, A.B.A. Section of Legal Education and Admissions to the Bar. Professor Peter W. Martin of Cornell Law School served as Reporter to the Task Force.
72. Id. Recommendation 9, at 4.
goals. Specifically, the Cramton Report represents a "break-through" in two respects. It dispels long standing, although diminishing, academic resistance both to "practical" education in law schools and the traditional resistance to "nonprofessional" teachers. These are very significant steps in legal education. The report carries added weight because of the stature of the Task Force chairman, Dean Cramton.73

Meanwhile, many law schools had responded by altering their curricula to take into account the need to provide basic trial advocacy. "Clinical programs,"74 multiplied. By 1978 there were 494 clinical law programs in 57 different fields of law offered by 139 American law schools.75 The proliferation of such programs is "an example of how a combination of 'seed money' for experimentation and start-up [in this case, usually provided by The Council on Legal Education for Professional Responsibility] together with support for information exchange, can be used successfully to influence the content and method of law school training."76 Under William Pincus, President, CLEPR gave vigorous support to these developments.

Concurrently, courts all over the country adopted student practice rules which permit third-year, and, in some states, second-year law students the opportunity to participate in trials and even to argue appeals under the supervision of instructors or experienced counsel. The wisdom of the latter has yet to be evaluated. By 1978, all fifty states (including the District of Columbia and Puerto Rico) had adopted some form of student practice rules.77 Twenty-four United States District Courts had such rules by 1978.78 The efforts of the Judicial Conference Implementation Committee will probably stimulate an increase in the number of districts with such rules.

73. The A.B.A. will hold a National Conference on Enhancing The Competence of Lawyers in Houston from February 3-5, 1981, immediately preceding the Midyear Meeting of the A.B.A. Although the A.B.A. Journal had originally been skeptical of the concern about the adequacy of trial lawyers, it has come to acknowledge the seriousness of the problem.

74. Clinical programs may be defined as applied skill activities in which students participate. Gee & Jackson, supra note 51, at 883.


76. Cramton Report, supra note 51, at 11-12 (footnotes omitted).


The number of trial advocacy courses offered within law schools also has dramatically increased. As of 1976, of 164 A.B.A. accredited law schools, 149 offered some kind of basic instruction in trial advocacy.\(^7\) These courses tend to group themselves into three broad categories: "observation" courses, "participation" courses, and "observation-participation" courses.

"Observation" courses are designed on the theory that trial advocacy skills are best learned through the observation and analysis of demonstrations given by skilled litigators, the method long employed in training barristers in London's Four Inns of Court. These courses include classroom instruction and discussion of advocacy problems, observation of trials in their entirety, "dissection" of actual trials through "post mortem" analytic discussions with the principals of the trials, when possible, and demonstration of particular parts of a trial such as various motions and opening and closing statements. To a limited degree, students are allowed to practice those skills learned through observation. Courses following this model are offered by Northwestern University,\(^8\) Albany Law School, the University of Hawaii, Brooklyn Law School, Catholic University, and the University of California at Davis, to name only a few.\(^9\)

"Participation" courses are patterned on the hypothesis that the best way, if not the only way, to learn trial skills is by actually gaining first-hand experience with the litigation process—helping in trial preparation and observing trials, "learning by doing." Participation courses accordingly place their emphasis on requiring students to take some part in various litigation stages either on a "skill-by-skill" basis or in the context of an actual or simulated trial.\(^10\)

"Observation-Participation" courses combine both approaches. This model, the most popular approach, features classroom instruction in trial techniques, actual or classroom demonstrations of particular trial segments, such as opening statements or direct and cross examination, and of entire trials, and supervised student practice of litigation skills through the conduct of actual or mock trials. Trial advocacy programs following this format are offered at law schools of the University of Illinois,\(^11\) the University of California at Berkeley, Fordham University, the University of Michigan, the University of Minnesota,

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81. Younger Report, supra note 79, at 1, 6, 7, 9, 24.
82. See generally id. at 27.
83. Graham, The Trial Advocacy Program Experience at Illinois: Excellence in the Teaching of Many at an Affordable Price, 66 III. B.J. 40 (1977). The Illinois program is also a stalwart example of how such programs can be run economically and yet remain effective.
and the University of Oregon. Virtually every law school building constructed in recent years has at least one trial moot courtroom; many have two. We can hope that "moot courts" will no longer be solely an appellate exercise.

Laudably, many of these courses utilize practicing attorneys and trial judges as course supervisors or instructors. Unfortunately, due primarily to budget constraints, most law schools offer these courses to relatively few students. Only an estimated one-third of the students desiring instruction in trial advocacy currently can be accommodated by law school courses. It is interesting to note something of a parallel in the large expansion of "summer clerkships" or "internships" in law offices during the past decade. As an alternative to law school classroom instruction in trial advocacy, various internship or externship programs have been developed in which students are "apprenticed" to skilled litigators in either public or private law offices. One example of this type of program is occurring in the United States District Court for the Southern District of New York, spurred by Chief Judge David N. Edelstein. Leading New York City litigation firms hire third-year law students from six New York-area law schools to work fifteen hours a week and to observe first-hand and assist experienced trial attorneys. Similar programs have been sponsored in the District Court for the Northern District of Texas in conjunction with Texas Tech, between the Philadelphia District Attorney's Office and Temple University, and between the Santa Clara Public Defender's Office and the University of Santa Clara and Stanford Law School.

Harvard Law School, in conjunction with Northeastern University School of Law, has embarked on the most comprehensive project—a

84. Younger Report, supra note 79, at 6, 20, 34, 45.
85. See, e.g., the programs of Brooklyn Law School, California Western School of Law, the University of Chicago Law School, Yale, Georgetown, McGeorge School of Law, and the State University of New York at Buffalo. Id. at 6, 8, 10, 21, 32, 37, 67.
86. As of 1976, the Younger Report listed, for example, the programs of Antioch School of Law (fifteen students), the University of Chicago Law School (thirty-five students), Fordham University (limited enrollment), Georgetown (twenty students), and University of Houston Law School (twenty-eight students). Id. at 3, 10, 20, 21, 24.
two and one-half million dollar program affiliated with the Legal Services Institute of Greater Boston Legal Services. In this program, the Legal Services Institute functions as both a law school and an operating legal services office. The goal of the program, which absorbs the entire third year of law school, is to involve students "intensively in practice and in study and analysis," so as to "provide a genuine bridge or transitional period from law school to legal services practice." This is to be accomplished through closely-supervised instruction in the myriad tasks an attorney performs in practice, especially the skills of conducting factual investigations, taking depositions, preparing trial and appellate briefs, and trying jury cases.\textsuperscript{90}

A valuable step in trial advocacy training, combining elements of law school classroom instruction, the N.I.T.A. workshop approach, and graduate continuing legal education programs, occurs in the "American Inn of Court."\textsuperscript{91} The pilot program was established in February of this year by Senior Judge Sherman Christensen, an experienced judge of the United States District Court for the District of Utah, in conjunction with Brigham Young University Law School.\textsuperscript{92} This adaptation of the Phi Alpha Delta Inns of Court programs, that were inspired by the English Inns of Court, is an "unincorporated association of judges, practicing lawyers, law students and law professors" committed to the objective of uniting a cross section of the bar, whose primary professional interests are in trial or appellate practice, into a forum for the promotion of excellence in legal advocacy. The Brigham Young Law School Inn meets on a monthly basis to provide discussion of the principles and skills of practical legal advocacy.\textsuperscript{93}

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In spite of the herculean efforts and achievements of many members of the legal profession, however, only the "tip of the iceberg" of the serious problem of advocate competency has been addressed. Proper performance by trial advocates is imperative in the public interest. As the complexity and volume of both civil and criminal litigation escalates, the quality of advocacy directly affects the rights of litigants, the costs of litigation, the proper functioning of the system

\textsuperscript{90} See Open Letter from Jeanne Kettleson, Executive Director of the Legal Services Institute, to second-year students at Harvard Law School and the Northwestern School of Law (Jan. 4, 1980) (on file with the Fordham Law Review).

\textsuperscript{91} Charter, American Inn of Court I, Brigham Young University Law School, (Feb. 12, 1980) (on file with the Fordham Law Review) [hereinafter cited as Charter].

\textsuperscript{92} Letter from Judge J. Clifford Wallace to Chief Justice Burger (April 7, 1980).

\textsuperscript{93} See Charter, supra note 91. Similar programs have been created by Phi Alpha Delta Legal Fraternity and at the Marshall-Wythe School of Law of William and Mary University.
of justice, and, ultimately, the quality of justice. Far too many civil cases are currently being tried which experienced, well-trained lawyers would negotiate to settlement. There are too many cases taking four, five, or six days to try, which truly competent attorneys would try in a third that time—or less. Because of this, persons who are waiting to have their cases tried must wait longer. In civil cases this inadequacy translates into delays that increase the costs of obtaining judgment and rob even a just judgment of much of its value, the same kind of “economic larceny” which inflation works on all of us. Delays in criminal cases, when combined with our very liberal bail release concepts of today, may leave some persons on the streets who are ultimately going to be found guilty and confined. Conversely, there is the risk that some defendants who cannot gain release may be confined for long periods. Long trial delay with defendants at large means the public is placed in continuing jeopardy.

The American people are indirectly, but definitely affected by mishandled litigation. The public interest demands competent trial advocates. A profession that enjoys a monopoly on legal services through public license must respect the public interest and solve this problem. If the bar and judges do not, the legislatures may step in.

All elements of the legal profession must unite in upgrading the quality of practical trial advocacy training available to law students. As the studies have shown, there is a clear and growing consensus as to the direct relationship between the lack of trial advocacy instruction in law school and the poor quality of advocacy in our courts. Most law schools have been moving in the direction of more comprehensive training in trial advocacy although the suspicion of some token efforts lingers. Declarations of concern too often are accompanied by the addition of only one or two courses to the curriculum. A vast difference lies between the type of intensive instructive which achieves a “wedding of theory and practice,” such as the $2 1/2 million Harvard-Northeastern program, and the type of trial advocacy “training” which consists merely of a semester’s worth of casual, off-the-cuff, and often anecdotal lectures by a local practicing attorney. Token programs may be worse than none.94

Too much ink has been spilled debating “intellectual” instruction as opposed to “useful” instruction.95 To view training in professional

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94. See generally Younger Report, supra note 79; see also Seidman, What’s Wrong with Legal Education?, Bar Leader, May–June, 1980, at 2.

95. Former University of Michigan Dean Theodore St. Antoine commented that “[t]he primary aim of law school...[is] the enlargement of the life of the mind...[which is] an end in itself.” St. Antoine, A Dean Laments, Learning and the Law, Spring 1976, at 26, 28. While members of the faculty of law schools have, of course, the right of academic freedom, law schools must submit to standards of accreditation and are not to graduate students that are unfit to practice law.
skills, such as trial advocacy instruction, as nonintellectual or mechanical simply is inaccurate. The glib response of some that law schools "are not running trade schools" deserves the curt response "what do you think the consumers want?" By all means educate in legal theory and analysis, but do not stop there. Trial advocacy is, of course, far more than simply forensic skill in the court room. Trial advocacy training requires development in how to employ the very reasoning processes that the Langdellian-Socratic case method was designed to instill in law students. Neither skill alone makes a sound practitioner to serve peoples' needs. Competent trial advocates must possess both a thorough working knowledge of the area of law in which they are operating and the ability to apply the law to new legal problems as they arise. Dean Norman Redlich of NYU Law School has stated this proposition well.

We cannot hide behind the flimsy claim that these qualities are undefinable or unteachable . . . [or] that teaching these skills will mean the sacrifice of intellectual pursuits. There is nothing non-intellectual about preparing for a complicated trial.96

Instruction in the mechanics of anatomy and surgery may well be less "academic" than some other subjects taught in medical schools, but the skill is indispensable to those who practice in the operating rooms and to their patients. Just as the "last resort" for many a medical problem is surgery, so too the last resort of a legal dispute may be the trial. That most physicians are not surgeons and most lawyers are not trial advocates does not justify neglecting the beginning of instruction in either surgery or trial advocacy in the professional schools that hold out their mission as the training of professionals. We can agree with Cardinal Newman that "[n]othing of course can be more absurd than to neglect in education those matters which are necessary for a [person's] future calling."97

Obviously law schools alone cannot make good trial lawyers, any more than medical schools alone can make good surgeons. At the inception of the process, however, law schools must help prepare students to become trial advocates. The law schools superbly prepare students in legal analysis and legal theory, but they have not performed well in teaching students how to translate those theoretical skills into practice. Those of us who have pressed this point for years have emphasized at all times that this must be a joint enterprise. While the law schools must lay the foundation, trial judges and practicing attorneys, through bar associations, must work with the law

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96. Redlich, Lawyer Skills can be Taught, Learning and the Law, Summer 1976, at 10, 14.
schools, contributing their services, if necessary, until society is ready to "foot the bill" for turning out graduates competent for their high calling.

We know, of course, that the overwhelming proportion of the teaching that goes into the making of a doctor is performed by practicing surgeons and physicians who, in some instances, contribute their time as a professional obligation. We know, too, that no medical graduate can leave medical school, hang up a shingle, and immediately begin treating patients or performing surgery. They all must undergo a rigorous internship and a residency training, and, increasingly, they take graduate studies in a wide range of specialities. In this respect, the medical profession was at least a half century ahead of the legal profession. As our problems are different, our solutions must be different, but we must learn from the experience and the techniques of medical education. We spend from ten to fifteen times more public and private money to make a doctor than we spend to make a lawyer. Society must reconcile itself to spending more for the education of lawyers, and the profession must spearhead the persuasion.

In this process there must be a new relationship between the three branches of our profession. Trial lawyers and trial judges must work directly with the law schools. Whatever barriers exist to having practicing lawyers integrated into this aspect of law teaching must be broken down.98 There are encouraging signs that the old negative attitudes on this score are changing. The American College of Trial Lawyers, with over three thousand members, has pledged to support these efforts and to cooperate with the law schools. Thus, some of the best trial advocates in the United States are prepared to perform these services, and a slowly increasing number are already doing just that.

The three segments of the profession must each contribute what it can do best. Law teachers are skilled at organizing teaching; trial lawyers are skilled in the arts of advocacy, trial judges know what skills are needed and, as the surveys show, are painfully aware that lack of skills can make a three-day case run ten days. The organized bar, especially the state bar associations, must insure that law schools are provided with the necessary financial support to undertake this work. The organized bar must go to the legislatures and to private donors in support of the law schools.

If the Bar, the judges, and the law schools do not resolve this problem by joint efforts, there is one more direct, albeit Draconian, solution. The American Bar Association established its standards for accrediting law schools more than a half century ago. Those standards which relate to curricula, library content, and faculty, represent one

of many great contributions of the Association to our profession and to the administration of justice. The notion that law schools, alone, decide what and how it will teach was negated more than fifty years ago when the A.B.A. accrediting program was adopted. Because the Judicial Conference of the United States recommended that the Association establish advocacy training as a component of standards for accreditation, a tool is now available to ensure that any law school representing itself as having prepared students in the law has in fact trained them in the vital aspects of their professional practice—the capacity to deal with real life problems of clients.

We must firmly reject any notion that the status quo is good enough. As a learned and public profession, we must never be seen as a group chiefly interested in "protecting our own turf." We have a duty to society to set and enforce the highest standards of basic legal education, of ethical conduct, and of professional excellence. Should we fail in our duty, we will not have and we will not deserve the confidence of the American people.

Although most of the constructive discussions since the Sonnett Lecture have focused upon how to integrate suitable programs in trial advocacy into the law school curriculum, consideration of additional approaches has proven fruitful. Among these are suggestions for restructuring a third year of law school, a year which to many does not seem to be valuable in its present form. I have proposed that several law schools experiment with offering a program for those interested in a career in trial advocacy in which the first two (11 month) years would include study of the fundamentals—the "3 R's"—of law along with substantial advocacy-related instruction. The third or final year of the legal education, a full twelve-month period, would be devoted to involving students in every phase of the litigation process, from the first interview with a client to verdict or judgment. The experiment requires the combined experience of lawyers, teachers, and judges and the close coordination of their respective talents. Alternatively, we should experiment with two eight-month years

101. For further development of this idea, see Address by Chief Justice Burger, the American Law Institute (May 16, 1978) (on file with the Fordham Law Review). The Executive Committee of the Association of American Law Schools expressed its willingness to entertain applications for variances from its accreditation requirement. See Memorandum from Millard H. Ruud, Executive Director of the Association of
combined with three month internships in each year, followed by a year of "residency" training in advocacy. This alternative program could readily be adopted to other specialties along the lines of the graduate year in taxation at New York University Law School. The idea of a two year law school has been discussed for many years. In addition to the curriculum change, a variety of other suggestions have emerged for restructuring the three-year format of law school so as to accommodate expanded practical advocacy instruction. Graduate programs in trial advocacy and other specialties have also been discussed as a means of addressing the problem of advocacy in a law school setting without requiring significant restructuring of the undergraduate curriculum or teaching methods. Naturally, graduate work in a specialty will not make skilled specialists, but I am persuaded it would be a vast improvement over the traditional "shotgun" approach of the traditional three year program.

Trial advocacy training must also be pursued through continuing legal education, by programs sponsored by law schools, by advocacy

American Law Schools, to Deans of Member Schools and Members of the [A.B.A.] House of Representatives (June 15, 1978) (on file with the Fordham Law Review). As a result of the interest on the part of a number of law schools in advocacy training, a meeting of law school deans, other legal educators, and officials of the L.E.A.A. was called by Dean Norman Redlich of N.Y.U. Law School, and James Gregg and Perry Rivkind of L.E.A.A. Participants at this meeting seemed to agree, if not unanimously, that "[a]dvocacy training is a desirable feature of legal education not only for the purpose of training trial lawyers, but also because of the added perspective that such training provides in the student's learning of legal rules and reasoning." See Minutes of Meeting of Law School Deans on the Subject of Advocacy Training in Legal Education, in Washington, D.C. (June 27, 1978) (on file with the Fordham Law Review).

102. This idea has been recently revived. Cavers, A Proposal Renewed: Legal Education in Two Calendar Years, 66 A.B.A.J. 973 (1980).

103. Michael I. Sovern, former Dean of Columbia Law School, has proposed an experimental 2-1-1 plan for legal education. After two years of traditional instruction in the law, a small fraction of the student body would be allowed to spend a year in practice. These students would return to the classroom in their final year so that they may be allowed to concentrate their efforts in particular areas of study. Insights, provided by experienced students, would enliven classroom discussion, thus benefiting the conventional student. Sovern, Rosenberg, Motley & Rubenfeld, Training Tomorrow's Lawyers: A Response to the Chief Justice's Challenge, 11 Col. J.L. & Soc. Prob. 72, 76-77 (1974). Another commentator has suggested two-tier legal education. A student would attend a two year "law school," which would teach analytic and intellectual skills and, upon graduation, receive an intermediate degree. To achieve a juris doctor degree, the student would attend "lawyer school," run and operated by the bar. Practical skills would be taught at these practitioner schools. Manning, supra note 100. at 382.

institutes, and by Bar Association seminars. Some fear that such programs, if made mandatory, may generate perfunctory attendance on the part of some of those who may have the greatest need of further legal education. That is not a valid objection because the effectiveness of such mandatory programs can surely be evaluated.

I continue to believe, as I did in 1973, that movement towards specialist certification, beginning with standards for admission to trial practice, is desirable for litigants, courts, and lawyers—and for the public. The emphasis upon training in trial advocacy was not intended to suggest disregard for the need to improve training in other aspects of lawyering. There always were many possible areas for improvement. We need to start, however, somewhere and, as with surgery in medical practice, trial work is the most visible aspect of our profession. The surveys suggest that both lawyers and clients tend to complain about lack of skill in counseling and negotiation as well as about inept advocacy training.

Finally, in the Sonnett Lecture I expressed concern over the failure of all too many lawyers to observe elementary standards of civility in professional manners, behavior, and decorum that are essential for effective trial advocacy. My concern is greater today, in light of the recent surveys and studies. Centuries of courtroom experience have demonstrated that certain quite fixed rules of behavior, etiquette, and manners are the lubricant to keep the focus of the courtroom contest on issues and facts and away from distracting personal clashes and irrelevancies. These qualities are indispensable to a rational system of justice. Ethics cannot be taught in a single course, but should pervade the entire instructional process in law school. From the first hour of the first day in law school, there must be emphasis upon ethics and the necessity for civility. Without such standards trials can resemble—as some do—trial by ordeal.

Considerable progress has been made since 1973. Much more remains to be done. We must continue to work together, to push on, so that the public has the quality of trial counsel which they deserve and demand.

105. As of 1977, continuing legal education was mandatory in Minnesota, Iowa, Wisconsin, and Washington. Three other states had additional requirements for legal specialization. Legislation was then pending in nine states and under study in another eleven. Last year Minnesota included trial advocacy as a subject area in which attorneys should receive instruction.