

10-1-1970

The Comprehensive Review and Comprehensive Examination as a Pedagogical Device for Training Law Students in the Small Law School

Overton C. Jefferson

Follow this and additional works at: <https://archives.law.nccu.edu/ncclr>

 Part of the [Legal Education Commons](#)

Recommended Citation

Jefferson, Overton C. (1970) "The Comprehensive Review and Comprehensive Examination as a Pedagogical Device for Training Law Students in the Small Law School," *North Carolina Central Law Review*: Vol. 2 : Iss. 2 , Article 4.
Available at: <https://archives.law.nccu.edu/ncclr/vol2/iss2/4>

This Article is brought to you for free and open access by History and Scholarship Digital Archives. It has been accepted for inclusion in North Carolina Central Law Review by an authorized editor of History and Scholarship Digital Archives. For more information, please contact jbeeker@nccu.edu.

THE COMPREHENSIVE REVIEW AND COMPREHENSIVE EXAMINATION AS A PEDAGOGICAL DEVICE FOR TRAINING LAW STUDENTS IN THE SMALL LAW SCHOOL

OVERTON C. JEFFERSON*

INTRODUCTION

The controversy over legal education that has been raging like a volcanic eruption among legal educators, eminent members of the judiciary and other outstanding members of the legal profession as to which legal philosophy should be dominant in the training of law students has overshadowed the question of a comprehensive review and examination as a part of the curriculum for law schools.

However, before the problem at hand can be adequately discussed it is necessary to take a brief look at some of these philosophies as expounded by some of the better known legal personalities.

The philosophy of Professor McDougal concerning legal education is causing a great deal of discussion in contemporary thought before the "panel" of legal educators. Professor McDougal emphasizes the training of law students in the utilization of "social science skills" for the formulation of policy-making functions of the attorney both in public positions and private practice. He further contends that because of the trend toward independence among nations the law schools should prepare students for the realization of a world community in which future lawyers will set the standards for "community values" among the nations of the world.¹

Another dominant view point on the training of law students is that which emphasizes the teaching of practical skills in the law schools. This concept on legal education has been expounded by a number of able writers with Cantrall, perhaps, the leader of the group. Cantrall in a recent article asserts that the law schools can and should be able to teach techniques which will enable law students to acquire the practical skills

* B.A., Xavier University; LL.B., North Carolina Central University; LL.M., New York University.

¹ McDougal, *The Law School of the Future; from Legal Realism to Policy Science in the World Community*, 56 Yale L.J. 1345 (1947).

the young attorney will have to call upon early in his practice of law.² Hence the law school's obligation is to train law students in the skills necessary for the young attorney to take care of his clients. One variation of this practical skills philosophy is found in the concept of "client-caretaking" as expounded by Judge Frank who stresses the need of training law students in the skills employed in the trial court and who points out the necessity of law schools bringing themselves in closer contact with what clients need and what lawyers and courts actually do when faced with various situations which call forth the application of "Court room technique."³

There is still another group of legal educators whose philosophy is or it seems to be that every other related course can be taught as a part of another course. For instance, there are those who believe that equity can be taught better as a part of several courses such as pleadings, contracts, procedure and etc. rather than as a separate course.⁴ Another trend along the same line is the teaching of the commercial subjects—bills and notes, sales and some aspects of the law of banking in one "package" called commercial law. Professor Beutel advances the theory that the old method of covering commercial law in separate courses is inadequate because the average business transaction may involve simple transfer of title, the exchange of credit, and the assignment of collateral paper, all taking place within a single business transaction. Hence, the related business courses should be combined in order that the student may see the various legal devices in their true business prospective.⁵

It will be needless to pursue further at this time the enumeration of the various philosophical concepts on legal education. Nevertheless, it is to be hoped that out of this molten mass of intellectual speculation will evolve the ideal philosophy for legal education.

While not ascribing to the ascendancy of either of the legal education philosophies mentioned in the above discourse it is the purpose of this paper to show that a comprehensive review and a comprehensive examination based upon the comprehensive review is the best possible way the effectiveness of various concepts on legal education, whether it be a

² Cantrall, *Practical Skills Can and Must be Taught in Law Schools*, 6 J. Legal Ed. 316-323 (1954).

³ Frank, *A Plea for Lawyer—Schools*, 56 Yale L.J. 1303 (1947).

⁴ Orfield, *Place of Equity in Law School Curriculum*, 2 J. Legal Ed. 26-40 (1949).

⁵ Beutel, *A New Course in Commercial Law*, 3 J. Legal Ed. 51-59 (1950).

philosophy of legal education or a pedagogical technique, can be determined.

THE COMPREHENSIVE REVIEW

The "review" as a pedagogical device is practically non-existent as a method of instruction in law schools. However, "review" has been used as a pedagogical device to an advantage in other fields of education. It is commonly admitted among leading educators that a "review" when properly conducted is a very potent teaching technique. The word review connotes not just a mere repetition of facts to place them more firmly in the student's mind, but rather a new view of these facts in a different perspective that results in new understanding and a broadening of the student's knowledge. Review is not to be confused with drill even though they are very similar in that the material must be taught first in either case—the difference between the two is that review aims to fix things in the mind while drill aims to make them automatic.⁶

The innovations of so many new concepts to be employed in the training of law students just about makes it imperative that a comprehensive review and comprehensive examination based upon the traditional subjects taught in law schools be used to determine that the students are being properly trained in basic legal concepts. Therefore, with the employment of a comprehensive review based upon the traditional subjects taught in the law schools it does not matter which legal philosophy is dominant in the training of law students or to some degree whether certain subjects are taught in a "combination course" as has already been mentioned for equity and commercial law⁷ or whether the case method is used in preference to the problem method of instruction or the like because the use of a comprehensive review and comprehensive examination will enable the law school to check on the merits of the training employed by a particular law school. For, after all, the law school's first obligation to its students is to train them to be competent lawyers.

The first step in organizing a comprehensive review for a law school is the collection of law questions to be used in the review. These questions should be based upon such traditional subjects as real property, contracts, credit transactions, torts, trusts, bills and notes, personal property, wills, agency and partnership, procedure, evidence, constitutional law, administrative law, conflict of laws, criminal law, domestic relations, corpora-

⁶ Burton, *The Improvement and Supervision of Teaching*, 246-252.

⁷ Notes 4 and 5 *supra*.

COMPREHENSIVE REVIEW AND EXAMINATION 195

tions, equity, sales, mortgages, and legal ethics. The second step is to determine the number of questions to be used in the comprehensive review and the method to be employed in conducting the review. A set of mimeographed law questions consisting of two to three hundred questions covering the entire law school curriculum should be selected and assigned to senior law students in the second half of their senior year to be worked out by them at their own convenience before the end of the semester at which time a comprehensive examination based upon the questions used in the comprehensive review will be given them. Students should be made to feel that they are a part of the review, therefore, it would be advisable to give them one hour credit for their efforts since the review will be entrusted to the students to do it themselves under the supervision of a faculty member appointed by the dean to supervise the course. Such a program will tend to relieve the boredom that is experienced by a number of students in their senior year.

The students will receive many benefits from participating in this type of program. There is a tendency for the third year subjects to crowd out the subjects of the first two years of the law school experience and such subjects as contracts, torts, personal property and others begin to fade out of the student's memory. The use of a comprehensive review will enable the students to recall some of the principles of law that have temporarily slipped away from them in their eagerness to master each subject of each succeeding term of law school.

Another concomitant benefit that derives from the use of a comprehensive review is the acquiring of practical skills is the use of the law library. By using the law library to seek the answers to the legal problems raised in the review the students become more familiar with the type of source books in which the answers to legal problems are "discovered."

The comprehensive review will also benefit the students in developing an analytical process whereby they will be able to handle legal problems well within a minimum amount of time. This practice of dissecting the problems raised in the questions enables the students to lay bare the legal issues implied or concealed therein. They further acquire the technique of discarding words, sentences, clauses or facts which have no legal significance in the solving of the problem presented therein. Thus, by learning to avoid and reject non-essential background material leading up to the essential facts and issues presented in the problem, the students

acquire a very valuable asset which will benefit them immensely later in their practice of law.

Finally, the comprehensive review will aid the students in their preparation for the bar examination by serving as background material for other materials the students may gather in getting ready to "drill" for the bar. Perhaps if the review is properly conducted it may eliminate the necessity of a "bar drill."

THE COMPREHENSIVE EXAMINATION

The term comprehensive examination refers to any type of examination which has for its objective the testing of a student's mastery of a broad field of knowledge.⁸ The comprehensive system of testing students in law schools holds a minor and experimental position in law school pedagogy.⁹ There seems to be an attitude of confusion among legal scholars as to the value of comprehensive examinations as a pedagogical device in the law school curriculum.

The best argument set forth in favor of using the comprehensive examination as a teaching technique is set out in the quotation as follows: "(1) Though many factors enter into the educational process, the acquisition of knowledge is the dominant one. (2) Semester courses of study rounded up with a credit examination (the only test ever met on the material) and a diploma upon the successful completion of a number of courses permits, if not encourages, an official forgetting point. Such a mass of information usually recalled, deposited and abandoned is not education, but, in fact, it is a preventative of education. (3) Knowledge must be relatively permanent and available equipment of the student. It must be familiar and sharply defined so that it comes freely to mind when needed and can be depended upon as an effective cross-fertilizing element for producing fresh ideas. (4) Courses at earlier levels have a value, and materials of every department are scattered over a period of three or four years; it seems desirable that there should be a re-check or examination at the end of a major program. Examinations are also effective teaching devices. They integrate unrelated informations from other courses as well as from out-of-school sources."¹⁰ Further argument in favor of comprehensive examinations for law schools is that this system

⁸ Scott, *Comprehensive Examinations in the School of Law*, 9 Am. L. Sch. R. 697-702 (1940).

⁹ AALS Rep. (*The Comprehensive Examination*), 1940 Handbook 162-179.

¹⁰ Note 8 *supra* at 698.

COMPREHENSIVE REVIEW AND EXAMINATION 197

of examination directs the student's attention toward subject matter and legal problems more than it does toward the attitude of a particular instructor who is teaching the course.¹¹ In this way the comprehensive examination becomes an independent pedagogical device of its own instead of just a classroom mechanism for testing the ability of students.¹²

The argument against using comprehensive examinations as a pedagogical device is based upon the assumption that the essay type of examination is sufficient for measuring the ability of students and also for determining the effectiveness of the law school curriculum. The most outstanding reasons for not using the comprehensive system of testing can be summed up as follows: "(1) Administrative difficulties (2) Too great a faculty burden (3) The present system is satisfactory (4) Doubtful educational value (5) Bar examinations accomplish same purpose (6) Liberal Arts colleges are abandoning comprehensives."¹³ Further argument against the employment of comprehensive examinations is that such examinations tend to confuse the administering of other types of examinations given in the law school. The comprehensive examination can never become an efficient substitute for the essay type of examination used in a majority of the law schools because of the peculiar nature of the case method of instruction. Two different types of examinations are not necessary for measuring the ability of the students.

The comprehensive review and comprehensive examination are due for another "look" by legal educators because of the mounting pressure to train law students in wider fields of endeavor (diplomats, leaders in the community, government, etc.) besides the strict legal aspects of law and also because of the great number of failures in bar examinations each year.¹⁴ The comprehensive system of review and testing when employed as a unit has the potential to become an independent pedagogical device which will pave the way for the inclusion of such cultural courses as legal history, comparative law, some aspects of the social sciences, etc. in the regular law school curriculum.

¹¹ Note 9 *supra* at 170.

¹² *Ibid.*

¹³ Note 9 *supra* at 170-171.

¹⁴ Nationally Administered Bar Examinations, 7 J. Legal Ed, 28-48 (1954).