

1-1-1979

RETHINKING THE LEGAL SYSTEM: A MISSION FOR NEW LAW SCHOOLS

Hon. Jon O. Newman

Follow this and additional works at: <http://digitalcommons.law.wne.edu/lawreview>

Recommended Citation

Hon. Jon O. Newman, *RETHINKING THE LEGAL SYSTEM: A MISSION FOR NEW LAW SCHOOLS*, 2 W. New Eng. L. Rev. 1 (1979), <http://digitalcommons.law.wne.edu/lawreview/vol2/iss1/1>

This Article is brought to you for free and open access by the Law Review & Student Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Western New England Law Review by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact pnewcombe@law.wne.edu.

Volume 2
Issue 1
Summer
1979

**WESTERN NEW ENGLAND
LAW REVIEW**

**RETHINKING THE LEGAL SYSTEM.
A MISSION FOR NEW LAW SCHOOLS***

Hon. Jon O Newman**

Whenever a growing, vital law school finds a new home and takes its rightful place in the company of the great law schools of the United States, something important happens—important not only to American legal education, but also to the pursuit of justice throughout the country

Law schools of our nation have traditionally been the source of the creative thinking, the new ideas, the new energies, and the new initiatives on which the growth and success of the American legal process depend. When a new law school is dedicated, something important is added to the country and its legal system.

As those familiar with legal education know the central aspect of the process has been the study of appellate decisions. This has been true ever since the early days when reading law at the foot of a practicing lawyer gave way to formal classroom study. The contributions of Dean Langdell at Harvard have been the standard guiding all American law schools in their pursuit of intellectual inquiry. Generations upon generations of law students have been summoned to law school buildings and, under the guidance of an able faculty have been invited to ponder the intricacies of appellate decisions, to learn the skills of identifying issues, to go beyond the words to analyze the deeper meaning of the legal problem, to understand how to represent clients and pursue litigation in the courts.

Judge Newman presented these comments on April 8, 1979 at the dedication of the S. Prestley Blake Law Center at the Western New England College School of Law in Springfield, Massachusetts.

** United States Circuit Judge, United States Court of Appeals for the Second Circuit.

In recent years the process has moved beyond the narrow scope of appellate decisions to the world of legal and social reality. We have learned that many of the legal issues are not to be solved simply by studying the work of the appellate court. While court rulings remain the central focus of legal education, students are now invited to involve themselves with the happenings in the courtroom, the prison, and the police station.

As we have broadened the procedure of teaching law solely from books, we have also broadened the subject matter that is taught. We have increased our concern beyond the study of legal principles to widen our perspective and to examine the implications of the rulings on social institutions.

Even though techniques and subject matter of legal education have developed beyond their earlier limits, we still have neglected a fundamental aspect of the legal system. We have failed to study the very operation of the legal process. In particular we have failed to study the court process. For too long this area has been the step-child of the American legal education system. Too many law students, law teachers, and law administrators have shunned it as unworthy of their scholastic endeavors. The problems of court functioning, however, demand our urgent attention.

We have developed a legal system with a broad panoply of rights and a broad fund of resources. Generations and generations of skilled attorneys have gone through the law schools of this country. Yet, the structure and operation of the court system within which they practice have not benefited from their outpouring of talent and skill. In fact, the system is in great danger of succumbing to the costs and burdens that accompany expert lawyering. The sad truth is that our court systems are encumbered beyond belief. They are too slow, too costly, and sometimes too inaccessible to solve the great range of problems entitled to judicial resolution.

The solution will not come automatically. It will not come by any lucky stroke of fortune. The solution, however, must come; for if something is not done soon, the problem will only worsen.

Searching for solutions must become a major mission of our law schools. They must look beyond the narrow issues of court administration. There are institutions around the country that are concerned with court administration. That concern, however, has been an almost sterile scholastic endeavor since it takes the system as it is and only sees how it can be made to function somewhat better. Useful as that endeavor may prove to be, it is not enough. A far more searching inquiry is needed.

We must critically examine the total process without any preconceptions. Are we approaching litigation in the most just and expedient manner? Should a trial be anything like what it currently is? Should we be litigating all that we are? Should we even be in court at all? Should all issues be started in the trial court and sent to the appellate court or are there issues that should start in the appellate court and go to the trial court where the trial would be conducted under rules set in advance by the appellate court?

I do not have any notion of what the ultimate results of such an inquiry would be. I do suggest, however, that the law schools will be the only institution able to conduct the intense inquiry that is needed. The lawyers will not do it because they are too busy. The judges will not do it because they are part of the process; and, furthermore, they are no better than any other American institution when it comes to self-reform. Unless the new institutions of this country such as Western New England College School of Law pursue the problems of the court's business, and the process by which justice is administered, law teaching will not serve its fullest purpose.

I do not begrudge the traditional ways of teaching law. It is important to do what Professor Kingsfield of "The Paper Chase" likes to say to train young men and women to think like lawyers. Or, as Professor Scott of Harvard once put it, more modestly and perhaps more accurately "at least to make a noise like a lawyer."

The traditional academic modes must serve as the bedrock of an American legal education. I suggest, however, that in the process of turning out generations of lawyers, skilled at identifying new issues and determining new ways of fighting vigorously for their client, the law schools have done so well that they have become part of the problem. It is now time for them to become part of the solution.

We need the best thinking available to attack these problems. I believe the best chance of getting that new thinking will come from the new law schools that are free of the traditions of forty and fifty and one hundred years ago. The new law schools have the freedom to carve out their own traditions, to decide what to emphasize, to determine what will be of interest to their faculties, students, and alumni. The direction chosen can result in a distinguished contribution to the fundamental rethinking and restructuring of the American legal process.