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State of the Law School, March 26, 1970

William B. Harvey
Indiana University Law School

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I am pleased to have again the opportunity to report to the students and, in the same message, to the faculty and friends of the School of Law on developments over the past year. The period since my last report in April, 1969, covers a remarkable diversity of experience within the University and the School of Law. Within that diversity is much that is encouraging and in which we take justifiable pride. There are also, however, certain sources of concern. I shall try to deal candidly with all significant developments.

421 students enrolled in the School last September, giving us the smallest Fall semester student body since 1963. Three factors serve to explain this sharply reduced enrollment. Dominant among these was the Selective Service system which no longer accords any protected status to the law student. The second factor was the substantial fee increase which became effective throughout the University in September. I shall comment somewhat more fully on the implications of the fee structure in a few moments. The third factor was a policy decision within the School to make a modest upward adjustment in our admission criteria. On admission policy, as well, I want to comment somewhat more fully.

Applications for admission to the School in September, 1969, were up by about 12% over the preceding year. Even more encouraging, however, was the improvement in the quality of credentials presented by many applicants. The mean and median undergraduate averages and LSAT scores of the 171 first year students who enrolled in September were the highest in the history of the School. * Had not Selective Service and the fee increase operated to restrict enrollments, it seems reasonably clear that we would have filled our normal first-year class of 225 with students of comparable quality. Over recent years we have placed considerable stress on this kind

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*The mean undergraduate grade point average is 2.78 and the median is 2.77 on the 4.0 scale. The mean LSAT score is 571 and the median 576, both around the 75th percentile nationally.

receive his law degree in June. While a young lawyer in the strict sense, he brings to us nine years of experience as a Senior Appellate Conferee in the Internal Revenue Service. These three appointments will strengthen greatly our teaching staff in Property, Local Government, Corporations, and Taxation. In addition, we shall be able to adjust immediately to Dean Thorpe's move to full-time teaching, through Professor White's service as Assistant Dean for Administration and Professor Underwood's assuming responsibility as Assistant Dean for Student Affairs.

It is most appropriate at this time, I think, to say a special word of appreciation for Mr. Thorpe's three years of service as Assistant Dean. As our new administrative arrangements suggest, Mr. Thorpe has borne administrative burdens beyond the call of duty, and during some terms his teaching duties have reached the full-time level. All of us wish him every satisfaction as he turns to full-time teaching.

As all of you know, the faculty has been deeply interested in a far ranging and fundamental examination of our curriculum. This interest reflects awareness of the accelerated pace of change in our society, the proliferating demands for traditional legal services, and the new kinds of lawyer roles which require new skills and insights. As a first phase in the proposed study, the Curriculum Committee this year has concentrated on the first-year program. This has seemed an appropriate starting point, not because our developed dissatisfactions are strongest in the first year, but because that part of the curriculum makes a claim to being truly fundamental -- a claim that has been recognized by the fact that we have required the first year course of all students.

The curriculum study has not progressed far enough yet to permit a report to you in significant depth. Our first step was to seek information from the faculty on the coverage of the first year courses, the teaching methods used, and the educational objectives envisaged. We also sought their judgment on the necessity of various bodies of instruction as fundamental components of a sound legal education. We have made clear in an interim report to the faculty that we will need their continuing active support and cooperation in identifying those areas of the curriculum needing reform, in working out imaginative experimentation, and in diversifying approaches to meet the variety of needs presented by today's law students. Plans have been made also to assure student contributions to the study and assessment of the curriculum.

I wish I were able to report that we now see at hand or at least dimly on the horizon the grand curricular design which will meet the challenges of today and tomorrow and enlist the solid enthusiasm of all students and faculty. Candor requires the admission that the processes of change

will be slow. There are several legitimate reasons why this should be so and some others which are effective constraints on rapid development, whether legitimate or not. May I mention a few of these?

What we seek is reform in a basic, functional sense. Such reform will not necessarily mean the disappearance of all or even most of the traditional structure of teaching and learning. Indeed, I suspect that our study will tend to validate much that we have done in the past and are doing now. Nevertheless, we cannot ignore the sense of disquiet over legal education that is felt by many teachers and is reflected clearly in student attitudes and levels of commitment. Many of us believe that this disquiet grows out of features of legal education that will not be eliminated merely by repackaging and rescheduling the traditional areas of instruction. We need to break significantly new ground in our perception of the subject-matter responsibilities of a good law school and of useful techniques for developing the full range of professional skills. We need to provide for enlisting the fuller involvement of students in their own education. We may need to develop new degree programs for students with specifically professional, paraprofessional or subprofessional objectives, perhaps requiring less time than the current six-semester course. At the same time, we probably need to develop more substantial, interdisciplinary programs for other students. We may need to abandon traditional curricular packages through much of the second and third year, relying more fully on programmed instruction for information conveyance and independent research and clinical experience for critical skill development.

When one considers the range of possible changes encompassed within significant curricular reform, the pattern of constraints becomes clearer. A significant deterrent to curricular reform in the law schools is provided by the American Bar Association's current standards for accreditation. These standards also must be subjected to a critical re-examination and revision if they are to support rather than impede creative innovation in the law schools. Other restraints on curriculum development are imposed by the traditional set of expectations addressed by the practicing bar to the law schools. These restraints are only cautionary, however; they do not preclude change. As we reform ourselves, we must be careful to retain the understanding and the support of the Bar. Finally the economic constraints on curriculum development are significant. Reform will require an infusion of financial support for legal education far beyond traditional levels.

For all these reasons, I cannot assure you that major reforms will be implemented here or in any law school in the immediate future. I can assure you, however, that we will move the effort ahead with as much

dispatch as our other obligations, our imagination and creativity, and our resources will permit.

While fundamental reform of the curriculum is under study, a number of smaller but nevertheless important changes have been made. This year the faculty removed the requirement that each student take a course in Comparative Law, International Law, Jurisprudence, or Legal History. We will continue to offer instruction in these important areas and will encourage students to study them. We believe, however, that we no longer need the coercion of a degree requirement.

A number of new course offerings have been approved this year. Recognizing the growing need for lawyers to work across disciplinary lines, the faculty recently authorized a course to introduce law students to social science methodologies and to various mathematical applications of possible utility in legal research and analysis. A new elective course in Military Law will be offered next year. Our offerings in the Property field will be enriched by a new course in Land Finance Law and a seminar in Resource Planning. Also next year, the School of Law and the Graduate School of Business will launch a new four year program leading to two degrees -- Doctor of Jurisprudence and Master of Business Administration. Formerly the programs leading to these degrees required five years of study. The integrated four-year program will permit a 20% reduction in this period and provide, we believe, a richer educational experience.

Discussion of curriculum development may call to your mind the question of student involvement in various aspects of study, planning, and decision-making within the School. You will recall the general meeting last Fall in which Mr. Levy, Mr. Stewart, Professor Pratter and I discussed this matter. The result of that meeting was a remission of the question of student involvement to you. I indicated at that time that the faculty was receptive to indications of student interest and that we would await your proposals on those aspects of policy making in which students want to play a role and on procedures for selecting student members for committees and other deliberative bodies.

That meeting did not precipitate a rush of student activism in the School. I make no criticism of the lack of such activism, for I can see readily some perfectly valid reasons why you may consider your existing commitments sufficient. On the other hand, I do want to recognize, and express my appreciation for, several indications of student interest in selected aspects of the School's policy and program. An informal committee of students and faculty has been exploring some possible modifications of our grading system. The Law Journal editorial staff is

participating in an important study of the Journal's role in the School and in the community and its mode of operations. Another informal student committee has been involved in discussions of new clinical programs. Students have continued to meet with candidates for faculty appointment whom we have had here for interviews. The recently organized Black Student Lawyers' Association offers the prospect of a number of creative involvements in developing aspects of our program. Out of an incremental, largely student-motivated approach will come, I believe, increasingly significant student involvement in the development and improvement of the School.

The mention of the student effort to extend our clinical programs prompts a somewhat more general comment on this type of curricular development. While some kinds of clinical programs can operate effectively without special rules on the practice of law -- Professor Hopson's Clinic in Juvenile Problems being a good example -- most of them require some relaxation of the rule prohibiting practice by other than fully admitted attorneys. After extended discussion with the State Board of Bar Examiners, members of the Supreme Court, and officers of the Indiana State Bar Association, we were able to get from the Supreme Court in mid-1969 a workable rule on limited practice by third-year students involved in approved clinical programs in the law schools of the State. It was quite clear throughout all discussions, however, that the ultimate effectiveness of the new rule would depend on our success in marshalling enough time of fully-admitted lawyers to provide the requisite supervision of students.

Obviously we will encourage and welcome participation in our programs by practitioners. It has seemed to me quite clear, however, that we must look to our own faculty for the major share of the supervision required in our instructional program. For that reason I have sought from the Supreme Court a companion rule to the new rule on student practice which would facilitate the admission of members of our faculty, all of whom have been regularly admitted in some state, to the Indiana Bar. As yet, I have been totally unsuccessful in this effort. The economic and temporal barriers erected by the old rule governing admission on foreign license strongly discouraged applications for admission by faculty members. Indeed, the old barriers have now been raised. An amendment to the admission rules, adopted by the Supreme Court early this year, makes it more difficult for members of our faculty to be admitted. May I indicate briefly the operation of the old rule and the impact of the recent amendment?

The former rule authorized admission to the Indiana Bar of a lawyer, duly admitted in another jurisdiction, who had had five years of

practice, who affirmed that he intended to engage in the full-time practice in this State, and who paid an admission fee of $250. By interpretation of the rule, full-time law teaching was equated to practice. Consequently, a lawyer, for example, who joined our faculty after four years of practice in Chicago was eligible for admission in Indiana after one year of teaching -- his period in actual practice being tacked to his year in teaching to make the required five year period.

Because the five-year requirement seemed unduly stringent as applied to lawyers coming to Indiana to join the faculty of an accredited law school and also because the $250 admission fee was a serious deterrent to a law teacher interested in admission in order to support the instructional program of his school, not for his personal gain, I recommended to the Board of Bar Examiners a new rule which would authorize the admission to the Indiana Bar of any person duly admitted in another state who holds a professorial rank on any approved law faculty in the State on payment of an admission fee of $25. The Board declined to recommend to the Supreme Court this rule, which would have facilitated substantially the admission of law teachers. The Board give assurances, however, of its continued interpretation of the foreign license rule so as to equate teaching with practice.

The recent amendment, which was adopted by the Supreme Court without recommendation from the Board of Bar Examiners, deals explicitly with law teaching as a basis for admission to the Indiana Bar. It seems to provide quite clearly that teaching and practice are not to be equated for admission purposes and that only five years of teaching in Indiana is a discrete ground for admitting the law teacher. Two or three illustrative cases will make clear the restrictive aspects of the new rule:

1) Assume the appointment to our faculty of an outstanding teacher-scholar who has served for fifteen years in a distinguished law school in another state. Only after five years of teaching in Indiana would our new appointee be eligible for admission to the Indiana Bar.

2) Recall the more typical case mentioned earlier of the young lawyer who joins our faculty after four years of practice in Chicago. Under the new rule his practice experience seemingly would be totally lost as a basis for admission and he would be required to teach in Indiana for five years before being admitted.

3) Finally, suppose a lawyer who has practiced in Ohio for 15 years before joining an Indiana faculty. If he applies for admission here within

two years of his arrival he is eligible for admission under the foreign-license rule. If he delays his application for admission for two years and a day, however, he is no longer eligible under the basic foreign-license rule, which requires practice for at least five years of the seven years immediately preceding his application. In these circumstances he could seek admission as a law teacher, but only after three more years, that is, after five years of teaching in Indiana.

I have not been able to understand the reasons for the recent amendment. It complicates significantly our problem of developing new clinical programs utilizing the new student practice rule, since it makes much more difficult the provision of adequate supervision of students. I am hopeful, however, that, as the Court gives further attention to this collateral aspect of its rule, a modification to aid us will be made.

Thus far in this report I hope I have communicated to you a sense of continuing development of the School -- development of higher quality of student body, faculty, and program. In certain areas, progress has been slower than we would have liked, but the sense of on-going progress is nevertheless clear. I would like to turn now to a number of problems which cause me great concern as I try to project the development of the School into the Seventies.

The School of Law is affected deeply by the budgetary stringencies imposed on the University in this biennium. As a partial response to inadequate legislative support, the Trustees sharply increased student fees at the beginning of this academic year. These developments produce two serious concerns which I want to discuss with you: first, budgetary constraints which make virtually impossible significant improvements in the staff, facilities, and program of the School; second, the almost prohibitive cost of legal education for many students in the School.

American university law schools have traditionally provided an extremely inexpensive form of education. A few professors, two or three classrooms, and a relatively modest library were enough to put a school in business. Classes were large, faculties small, large and expensive equipment unnecessary, the curriculum narrowly professional and relatively stable, and the research interests of faculty and students either non-existent or happily satisfied in the law library. This model of a law school still exists in many places. In most universities it continues to structure the assumptions of university administrations on funding legal education, and, since all lawyers received their legal educations in such institutions, it doubtless also reflects the Bar's understanding of the financial needs of law schools.

In fact, however, this law school model is an anachronism today. The model fails to respond to the educational needs of students, to the scholarly interests of faculty, and to the social needs for more and better-educated lawyers.

In a recent article bluntly titled "Financial Anemia in Legal Education: Everybody's Business", Dean Bayless Manning of the Stanford Law School discusses the historic model and contrasts it with the needs of the law schools today -- needs created by developments within the schools themselves as well as in the society they serve. I wish all of you would read Dean Manning's article. * Because it is immediately relevant to our own situation, I will mention briefly some of the developments he discusses.

Dean Manning points to the development of new areas of law and new categories of teaching and research which call for attention in the law schools. He discusses the developing perception that teaching and research of acceptable quality must relate legal rules, doctrines, and institutions to the insights and methods of the social sciences. He stresses the almost frightening volume of "law" being generated today in legislatures, courts, and administrative agencies, and the demands this makes on a law teacher simply to remain abreast of movement in his field. Developments within the law schools themselves also demand modifications of the traditional law school model. The ever-growing quality of our student bodies and the range and complexity of the materials to be studied call for more small-group instruction and more individual-student research. In our law schools today are many students with legitimate educational needs far beyond the ambit of a narrowly professional curriculum. Student interest in more clinical education, often shared by teachers and practitioners, calls for a level of staffing much closer to that of a good graduate school than of the traditional law school. And legal research now ranges far beyond the musty quiet of the law library. It frequently involves a necessary component of empirical field investigation to throw light on the actual shape of the problems with which law must deal and on the actual operation of legal institutions.

Dean Manning makes the perfectly valid point, which I would re-emphasize, that it is impossible to construct a model for the modern law school within the parameters of an old-fashioned budget. The level of support for legal education from the university's own resources must be raised, and new sources of significant funding must be found.

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*American Bar Association Journal, Dec. 1969, p. 1123.

I believe these views have general validity in the American law school world. At this University, however, they have special urgency. During recent decades, the School of Law has not shared fully in the support which has permitted many units of the University to achieve real excellence. In 1966, a decision to build a loftier mansion was made by the University administration with strong support from the law faculty. In the years since 1966, financial support for the School has been increased substantially, but the level of need remains significantly higher. The progress we have been able to make has remained, as before, within the traditional law school model. It has been limited to improving a conventional law library, to moving faculty salaries somewhat closer to equity, and to permitting a modest amount of faculty growth. I do not underestimate these developments or their impact on the quality of this School. To me it is a source of enormous satisfaction and, I believe, justifiable pride to experience the intellectual vigor and commitment of our faculty, to realize the growing quality of our student body, and to sense a widespread appreciation of these developments. The fact remains, however, that the advent of support which will permit us to move effectively on a new law school model still lies in the future.

What are the areas of need at this time? Resources must be found to permit growth of the faculty and to improve faculty salaries. If they are not found, not even a holding operation will be feasible; we will lose our best teacher-scholars to other schools. The law library must be radically strengthened and resources found to support faculty research. New physical facilities must be constructed even to accommodate routine growth of the library collection and to bring the seating capacity of the library up to the minimum standards set by the Association of American Law Schools. Those facilities are even more urgently needed if we consider the need for faculty growth, library enrichment, and program innovations.

I wish I could give you a confident report on prospects for marshalling the financial support the School needs for its growth to real excellence. As I have indicated earlier, we are feeling in this biennium the financial pinch imposed by the last legislative session on the entire University. In addition, however, within the University framework, as in society at large, the case for an expanded role of law still needs to be made effectively. Just as legal services for the poor and governmental support for legal research encounter political obstacles, so we confront problems in convincing our colleagues that, despite external limitations, the 1966 impetus to legal education here should retain its high priority. No greater contribution could be made to this end than your own good work in the School and on the outside, some of which happily has been noted in the press.

Almost all law schools are now seeking to supplement their internal funding by private gifts of endowment capital or annual expendable contributions. We are making such an effort in this School but thus far with limited, although greatly appreciated, success. Some small endowment gifts have been received, as well as one substantial gift not yet ready to be announced. At the same time, our annual-giving program has slackened, perhaps because of emphasis upon the University's sesquicentennial fund-raising. The most recent report I have received from the I. U. Foundation, covering 1969, shows receipts in the annual-fund drive approximately 35% under the 1968 level. Clearly we must increase our effort to communicate our need for resources to alumni and friends of the School and to enlist their support.

As I suggested earlier, I am deeply concerned not only about resources allocated to development of the School, but in some respects more concerned about the recent sharp increase in the cost of an education here. I do not question the judgment of the administration and Trustees which brought the fee increase into effect. As I stated publicly during the fee protest last Spring, there was no real alternative following the action of the 1969 Legislature on University financing. We need to make clear, however, the very special impact the new fee structure has on this School, special, that is, among all the post-baccalaureate programs of the University. We have no significant external source of fellowship funds. Teaching assistantships, fee remissions, contract research funds, private and public fellowship opportunities, which serve to a great extent to cushion the impact of the fee increase for other graduate students, have little relevance in this School.

In order to assess our position after the fee increase, I have gathered some comparative data on costs. I found these data deeply disturbing. Let me illustrate.

A student from Indiana who entered this School last September has paid in fees, in addition to his maintenance cost, $864 for the year. If he entered any one of a number of other excellent state law schools, even as a non-resident student, he would have paid significantly less. For example, at Illinois he would have paid $484; at Texas, only $435. The economic disadvantage of Indiana residents who want to study law in their own state university becomes even clearer if one compares the instate fees here with instate fees charged by other good state university law schools. Compare our $864 fees with Michigan's $680, Virginia's $443, University of California at Berkeley's $330, Illinois' $181, or Texas' $135.

While the overwhelming majority of our students come from Indiana, we have been making an effort, as I noted earlier, to diversify our student body. The economic deterrents to success in this effort are tremendous, however. A non-resident member of our entering class this year paid fees of $1984. Among the schools he could have attended with savings ranging from $234 to $1549 are Harvard, Michigan, Northwestern, Berkeley, U. C. L. A., Iowa, Virginia, Illinois, and Texas.

One need not reflect long on these comparative data to appreciate the position in which the current fee structure places this School. It faces the risk of being available only to the economically elite even among Indiana residents. For the non-resident the School has almost been priced out of the market. Without a major scholarship, which we can provide in only a few cases, there are strong economic inducements for the good student from another state to remove Indiana from the list of schools he will consider seriously. If economic factors limit our student body entirely to Indiana residents, I cannot avoid the conviction that our School will be the real loser.

Once fee levels have been set, it is rarely, if ever, a live option to lower them. If we are to solve our problem, therefore, and make this School competitive on the national market, as well as open it to all qualified Indiana residents, the solution probably lies in increasing substantially our resources for scholarships to students who can demonstrate need. This year, however, our scholarship funds are far below the level of demonstrable need. If an appropriate inflationary discount is applied, the amount in prospect for next year is even less. In my judgment, therefore, we face a real crisis that should evoke a deep concern in the University administration, in our State government, among our alumni, in the law firms, corporations, and other employers who look to our School for young lawyers, and indeed in our society as a whole. The material support of all of these elements is essential if the problem of opening legal education opportunity at Indiana University is to be solved.

This is the fourth annual report I have made to the students, faculty, and friends of the School of Law. The period since I assumed the deanship in 1966 has brought great change in the School, the University, and the State. Only 40% of the faculty which will start the coming academic year were here when I arrived. The University itself has a new President and a new, still-evolving organizational structure. The state has experienced changes in attitude and leadership which have profound significance for Indiana University and for this School. My almost four years here

have provided me enormously stimulating opportunities for participating in the development and strengthening of this School. They have also enabled me to participate to some extent in the general intellectual and community life of the University. In both contexts I have had the privilege of knowing and working with colleagues whom I have come to regard with great affection and respect, and who have demonstrated in many ways their deep commitment to legal education of the highest quality at Indiana.

Our objective at Indiana University is to build a law school second in quality to none -- indeed, a school capable of providing national leadership in projecting a model for legal education of the future. It may be that our reach exceeds our grasp. While we cannot fail to be aware of the pervasive uncertainties created by limited resources, we face our tasks with hope and enthusiasm. Perhaps I can suggest our view by concluding with the reflections of one of my favorite literary figures -- "Ace" Shaw, the town gambler of Spoon River, who observed

> I never saw any difference
> Between playing cards for money
> And selling real estate,
> Practicing law, banking, or anything else,
> For everything is chance.
> Nevertheless
> Seest thou a man diligent in business?
> He shall stand before kings!

Thank you for your interest and attention.