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Legal Orientation: The Book* and the Course

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The purpose of this comment is twofold. First, some attention will be devoted to comments about the new edition of Dowling, Patterson, and Powell on *Legal Method.*[1] Then will follow a description of the introductory course for freshmen at Montana State University School of Law.

This second edition of Dowling makes its appearance six years after the first one was published, and this time under the expert editorship of Professor Harry Jones, who has competently tested the contents through seven classes at Columbia University. The first edition was in use in thirty-six law schools throughout the United States, and it is the reviewer's belief that the new volume will be adopted for introductory courses at many other institutions, notwithstanding any critical comments that may be offered below.

Some of the critics and reviewers of the first edition will not be content with the present offering. *Erie Railroad v. Tompkins,*[2] this time with the company of *King v. Order of United Commercial Travelers of America,*[3] again[4] makes its presence known to point up the ever important problem of the status of state decisions in federal courts in a short chapter, *The Authoritative Hierarchy of Tribunals.* Once more[5] there will be justification in stating that the treatment of legal bibliography is not adequate without the use of supplemental materials. But this time there is more than a hint of the importance of legal ethics and professional standards. The question[6] of whether the book, while admirably suited to the needs of the better student, is pitched at somewhat too high a level for the student who meets minimum law school standards, is academic. But experience at Montana

**Materials for Legal Method.* By Noel T. Dowling, Edwin W. Patterson and Richard R. B. Powell. 2d Ed. by Harry Willmer Jones, Brooklyn, The Foundation Press, 1952. Pp. xiv, 607. $7.00.

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[1]Hereinafter referred to as *Dowling.*

[2]304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, 114 A.L.R. 1487 (1938) Dowling, p. 241.

[3]333 U.S. 153, 68 Sup. Ct. 488, 92 L. Ed. 608 (1948) Dowling, p. 247.

[4]Book Review, 47 Col. L. Rev. 699 (1947).

[5]Book Review, 27 B. U. L. Rev. 263 (1947).

[6]Book Review, *supra* note 5.

would indicate that the book is not beyond the intellectual reach of the average student.

About one-third of the second edition is new. The first chapter now contains materials explaining what the case method involves and expects of the student. Notes throughout the book have been expanded and, in the words of Professor Jones, "they are much more explicit and designed to permit faster coverage of the material in class."[7] The portion dealing with statutory interpretation has been approximately doubled in length, and a new section, *How to State an Issue of Statutory Law,* added. The chapter dealing with case law, *The Study of Law Via the Study of Decisions,* has been revised considerably by omitting textual excerpts, getting right down to an excellent selection of cases, and the inclusion of a section concerned with the distinction between holding and dictum. In the section dealing with the interpretation of statutes, some new and recent cases have been added, including the important and interesting *Schwegmann Bros. v. Calvert Distillers Corp.*[8]

This second edition differs from the first and from some of the other books designed for an introductory course in a most noticeable way. There is the greater use of personal authorship as reflected in the introductory transitional comments and notes compared to the textual excerpts of well-known writers included in the first edition. This is not to speak in derogation of these omitted authors. Too often, however, excerpts from articles and books intended for other purposes and aimed at a different level of readers, lose their significance and vitality when lifted from context, and what starts off as a great message ends up as a well-selected and annotated bibliography, little read and less understood. It is only regrettable that space (and perhaps time) limitations prevented Professor Jones from attempting a personal treatment of possibly res judicata, stare decisis or even Hofeld in a small dose.

One can find criticisms for any published volume and this edition is not without its minor imperfections. Typographical errors, of course, do not count against an author. Some observations made of the first edition, such as too short a treatment of the legal ethics and legal bibliography sections, still have some validity. The eighteen problems designed as practical exercise in library use are the same as those used in the first edition except

[7]Columbia Law School News, p. 3, Col. 4, APR 29, 1952.
[8]341 U. S. 384, 71 S. Ct. 745, 95 L. Ed. 1035, 19 A. L. R. 2d. 1119 (1951), Dowling, p. 370.

that numbers 6 and 15 have some language changed to bring them up to date. Certainly, these problems have outlived their utility after six years of use in the first edition. Even in schools adopting the book for the first time, and even assuming that papers are not returned to the students, there always seems to be a bellwether with a supply of answers in reserve. Perhaps, also, some space should have been devoted to the mechanics and techniques of abstracting cases and a sermon against the use of canned abstracts and outlines, although there may be good reason for not including this type of material.[9]

One correction that ought to be made deals with the consistent footnote reference to the first edition of Llewellyn's *Bramble Bush.*[10] This classic work has much in it to make it a must on every law student's reading list; yet the first edition is out of print and not easy to find in many law libraries.[11]

Of course, hardly any casebook can escape the company of dissatisfied perusers. Most criticisms are generally based on a refusal to recognize or, paradoxically, on direct acknowledgment that a certain casebook is based on experiences at a particular school having specific curriculum requirements. As a result, casebook authors attempt to overcome this localism by adding supplementary footnotes, comments, and chapters or honestly stating that their work is not intended to be comprehensive and that the individual instructor must fill in with his own materials. For example, Dowling does not contain material devoted to the mechanics of briefing cases or sermons against commercial outlines and abstracts, because this matter is expertly covered in Kinyon,[12] which is distributed to every freshman law student at Columbia University as it is at Montana State University. Material on legal ethics is minimal because a separate course, The Legal Profession, is offered, and a separate chapter of forty-one pages on the finding of case law is included because the curriculum at Kent Hall does not include legal bibliography as an individual offering.[13] Moreover, Chapted 8, *The Uses of Legal*

[9]There is good reason. As explained later, an excellent booklet on the mechanics of case study, Kinyon, *How to Study Law and Write Law Examinations* (2d Ed., 1951), is distributed to the students.

[10](1930, 2d Ed. 1951), Dowling, p. 69-70, 107, 163, 164. However, the second edition is cited once, p. 162.

[11]Morgan, *Introduction to the Study of Law* (1926) is also cited although there is a second edition (1948). Dowling, p. 49.

[12]Kinyon, *supra* note 9.

[13]A separate course, Legal Literature, under the expert tutelage of the Law Librarian, Miles O. Price, is offered in alternate summer sessions by the School of Library Service. The intensive treatment of legal bibliography attracts many practitioners, law students and law librari-

Reasoning, is not assigned for class recitation at Columbia University, but is included because instructors at other institutions do make valuable use of it.[14] Because of this, and in connection with it, the subject matter at pages 517-520, dealing with appellate decisions without opinions and per curiam decisions and opinions, might well have been introduced earlier in the book. If consideration can be given to a voice from the wilderness, then this reviewer would like to offer a suggestion which may, in part, answer some critics. Why not take Chapter 1, *The Materials and Methods of Law Study,* Chapter 2, Section 3, *Procedure and Its Importance,* Chapter 3, *The Study of Law Via the Study of Decisions* (omitting the section on legal ethics), and Chapter 6, *The Interpretation of Statutes,* a total of approximately three hundred and fifty pages, and what Professor Jones describes as the "hard core" of any Legal Method course, bind them and offer the result as the basic volume. The other chapters and sections could be offered, individually or collectively, in the form of pocket parts or pamphlet supplements. This would offer two distinct advantages: the students would not have to pay for more than actually used; the supplementary material, expanded in scope and content, as advisable, would more nearly approach national demands and still keep the total number of pages, as well as the size of the course, within practical bounds.

All in all, this volume is an excellent casebook, emphasizing legal materials to teach the techniques of law study. After examining most, if not all, of the other available books, the reviewer concluded that no other volume was as suitable for the introductory course at Montana State University.

The introductory course for freshmen law students is generally called *Legal Method* or *Introduction to Law,* but at Montana it is listed in the catalog and law school bulletin as *Orientation, Ethics & Bibliography,* with the hope that the title will be more descriptive of the contents. However, the contents of the course, which is given two hours per week for the entire school year, approximates three separate courses, although emphasis of subject matter varies. Thus Legal Ethics and Legal Bibliography, as now embraced in this first-year course, are substantially the same in content as when formerly offered as two separ-

ans to the session. Columbia University. School of Library Service. Announcement, 1952-1953. (Bulletin of Information, 52d Series #15, Apr. 26, 1952).

[14]In Chapter 3, Section 4C, *The Incomplete Synthesis of Cases on Promissory Estoppel,* references are made to Patterson and Goble, Cases on Contracts (3d Ed., 1949), used at Columbia University but not necessarily adopted or available at other schools.

ate courses to upper classmen for two hours per week for one quarter each. The orientation phase of the course emphasizes the case method of study and statutory interpretation, but, as described below, attention is also devoted to other matters of interest and value to the beginning law student.

The first week of the course commences with the orientation phase. Two hours, the entire first week of the course, is devoted to welcoming the students to the study of the law, a short history of the law school, a description of the honor system, its advantages and ramifications, and some comments on the use of the Law Library and the other libraries on the campus. Since the methodology of law school study is new to most, if not all, of the students, considerable attention is given to apprising them of what is expected in the way of outside preparation and class recitation and participation. The shortcomings of utilizing canned abstracts and commercial outlines are brought to the students' attention and some of the known "idiosyncrasies"[15] of the faculty are delineated. Outside preparation requires the reading of Dowling, p. 1-36, 69-78, 511-517, and *Kinyon,* p. 1-59, which deal with the case method of study and the technique of reading and abstracting cases. Subsequent classes are devoted to discussing the mechanics of case study, followed by some lectures on the organization of the various court systems and some initial consideration of the jurisdiction of courts.

After the above necessary preliminaries, class work is concentrated on the study of actual case materials in Chapter III of *Dowling.* Study in this chapter proceeds by three distinct steps. In the first, *Judicial Behavior When Faced With a New Problem,* the student concerns himself with such problems as the fellow servant rule, property in letters, the family car doctrine, and the liability of an owner of real property to a trespasser or user of the adjacent highway, and he must read and prepare familiar leading cases like *Priestly v. Fowler,*[16] *Baker v. Libbie,*[17] and *Hynes v. New York Cent. R. Co.*[18] The second phase is concerned with the Holding-Dictum distinction and the cases covered include the famous *Humphrey's Executor v. United States.*[19] The third step, The Synthesis of Decisions, attempts to impress the student with the necessity of recognizing the importance of the interrelation of cases. For this purpose, an expertly selected

[15]i. e. methods of conducting class recitations.
[16]3 Mees. & Wels. 1, 150 Eng. Rep. 1030 (1837). Dowling, p. 115.
[17]210 Mass. 599, 97 N. E. 109 (1912). Dowling, p. 120.
[18]231 N. Y. 229, 131 N. E. 898 (1921). Dowling, p. 136.
[19]295 U.S. 602, 55 Sup. Ct. 869, 79 L. Ed. 1611 (1935). Dowling, p. 150.

group of cases dealing with the contract or tort liability of a manufacturer or vendor of goods is used, and the students secure a preliminary introduction to such familiar decisions as *Thomas v. Winchester,*[20] *Devlin v. Smith,*[21] the landmark *MacPherson v. Buick Motor Car Co.,*[22] *Friend v. Childs Dining Hall Co.,*[23] and *Chysky v. Drake Bros. Co.*[24] In the process of developing these aforementioned concepts, the students are reminded that they are engaging in exercises aimed at proficiency in the mechanics of reading and understanding a court decision. The value of using a law dictionary is repeatedly stressed at each recitation, as every student is required to explain the meaning of the unfamiliar Latin and technical terminology, as well as many common words which take on legal connotations in their judicial contexts. In addition, the device of calling upon more than one student to recite his case abstract is resorted to in order to permit the class members to make comparisons as well as listen to objective evaluations by the instructor.

While the students are studying the above materials they are given an outside assignment consisting of a three-page question and short answer exercise designed to familiarize the neophytes with the Law Library resources, how they are arranged on the shelves, where located and what procedures must be observed in using them. It is felt that more can be gained by compelling the students to busy themselves in this self-conducted tour at their leisure and as individuals than by taking them around as a group or by devoting lecture time to describing so much that is new and unfamiliar.

After a full consideration of the above chapter,[25] attention is shifted to Chapter II, Section 3, *Procedure and Its Importance,* where the student is required to wade through a selection of eleven cases dealing with some of the familiar devices of adjective law, the demurrer, answer, judgment n.o.v., motion for directed verdict, motion for a new trial, and a non-suit, "not for the purpose of giving him an advance synopsis of Civil Procedure, but for the sole purpose of explaining to him why every

[20]6 N. Y. 397, 57 Am. Dec. 455 (1852). Dowling, p. 168.
[21]89 N. Y. 470, 42 Am. Rep. 311 (1882). Dowling, p. 178.
[22]217 N. Y. 382, 111 N. E. 1050 (1916). Dowling, p. 188.
[23]231 Mass. 65, 120 N. E. 407 (1918). Dowling, p. 201.
[24]235 N. Y. 468, 139 N. E. 576 (1923). Dowling, p. 205.
[25]Consideration of a section dealing with ethical standards in advocacy, canons of professional ethics and ethics in the citation of authorities is postponed until later in the course.

decision of so-called substantive law must be examined through procedural spectacles.'"[26]

At this stage of the course, the students are given another outside assignment, this time involving the negotiation and drafting of an employment contract. A fairly complicated set of facts has been mimeographed and distributed to the class, which is divided into "law firms" of four students. Half of the "firms" represents the employer and the other half represents the employee. Each "firm" is required to negotiate with another, and both sides have to submit drafts of the contracts which they propose for their clients, together with a statement of those items, if any, which they believe necessary in the final contract, but which the other group will not accept. It is felt that this project has value in that it impresses the students with the fact that the study and practice of law is not merely the reading of cases nor advocacy before the bar, but often foreseeing and forestalling future troubles and arriving at a written expression of agreement to which each party can adhere. The students are able to utilize their newly acquired techniques of reading in sifting the complicated facts presented to them. Furthermore, since the drafts of the contracts are required to be similar in format to one that a lawyer would actually present to his client, it is hoped that there may be a psychological lift derived in handling a product so much like an attorney. Of course, it is specifically stated that the students are not expected to demonstrate competency in the law of contracts.[27] Yet, it is surprising to note how well most of the members of the class are able to manipulate form books,[28] as well as to exercise their own resourcefulness, and, notwithstanding the anticipated deficiencies, many of the "attorneys" even take the trouble to learn how to fold the contracts in proper legal fashion. It is felt that this project has accomplished its aims and it will be repeated with subsequent classes, although with substantially different sets of facts.

After learning how to see through "procedural spectacles," four class hours are devoted to the techniques of preparing for and writing answers to law examinations. The first hour is devoted to writing the answer to an examination question under the same conditions and pressures as a regular examination. The subsequent class hour is devoted to discussing the papers, which

[26]Jones, *Notes on the Teaching of Legal Method.* 1 J. Leg. Ed. 13, 19 (1948).

[27]The problem is presented to the students during their fifth week at Law School and the draft must be submitted during the tenth week.

[28]Warning about the dangers of becoming slaves to form books is given.

are graded, recorded, and returned to the students. The next two classes are devoted to substantially the same process in an attempt to learn whether any progress has been made. It is hoped that these "dry runs" enable the students to enter the examination room in a better frame of mind, possessing a clearer picture of what is expected, and knowing how to write a better answer. Of course there are limitations, for no one individual can determine what is expected from each student by each instructor, even after canvassing the entire faculty, nor are the grades of one instructor indicative of much. Nevertheless, many deficiencies of a general nature, such as inability to read and interpret a question properly, or volunteering unnecessary information, can be pointed out and perhaps corrected.

Subsequent attention then shifts to Chapter 6, *The Interpretation of Statutes.* Here the student must concern himself with twenty-nine cases covering, in order, legislative intention, the plain meaning rule, the weight of prior interpretations and maxims of statutory construction. Consideration is not given to those areas more properly within the compass of a course in Legislation, which is offered separately to the upper classmen.[29] However, the students are apprised of the importance of attention to the concepts of legislation, and particularly statutory interpretation, in relation to a proper handling of subject matter like administrative law and taxation both in law school study and in actual practice. Moreover, even with their limited legal backgrounds, the students cannot avoid entering the realm of legislative jurisprudence in attempting to reconcile the disposition of *Holy Trinity Church v. United States,*[30] *Caminetti v. United States,*[31] and *Cleveland v. United States.*[32] Copies of the short, but informative, *How Our Laws Are Made,*[33] are distributed to the students so that they may have a somewhat clearer notion of the background involved in the evolution of legislative enactments.[34] In addition, the reading of this booklet enables the students to receive a preliminary introduction to some of the materials to be handled in the legal bibliography phase of the course.

After completing the above subject matter, there remain the

[29]The syllabus of the legislation course is being correlated and integrated with the Orientation, Ethics and Bibliography course so that unintended duplication will not occur.
[30]143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226 (1892). Dowling, p. 317.
[31]242 U. S. 470, 37 Sup. Ct. 192, 61 L. Ed. 442 (1917). Dowling, p. 347.
[32]329 U. S. 14, 67 Sup. Ct. 13, 91 L. Ed. 12 (1946). Dowling, p. 426.
[33]Zinn. *How Our Laws Are Made* (1952). Reprinted from U. S. Code Cong. and Admin. News.
[34]Dowling recommends Smith and Riddick, *Congress in Action* (2d Ed., 1949), an excellent graphic account of the same subject matter.

legal ethics and legal bibliography phases to be covered in a period of roughly twelve weeks. The legal ethics material requires the use of another book, Pirsig, *Cases on Legal Ethics.*[85] Course content does not embrace topics usually assigned to the area of the Legal Profession[86] or Judicial Administration.[87] Those "materials are not intended for introductory courses given to students entering the law school. They assume some knowledge, on the part of the student, of legal principles and, particularly, of legal procedure."[88] Emphasis, instead, is devoted to the attorney-client relationship and the ramifications of the Canons of the American Bar Association. However, it would be remiss if prospective attorneys were allowed to struggle through law school without at least an introduction to some of the other problems that they may some day face. Accordingly, a class session is devoted to a debate of the issues surrounding the integrated bar. Other prospective projects include formal talks to the class by members of the bench and bar on topics with which they believe the students should become familiar. So that the course will not become "cut and dried," it is planned to vary the procedure from year to year. Thus, not only may topics for debates and talks change in emphasis, if not content, but the class may be required to write papers on specific problems, and students will be assigned particular subject matter for study and oral presentation to the class.[89]

The final phase of the course, legal bibliography, requires the students to return to Dowling, Chapter 5, *The Finding of Case Law.* This chapter consists of some excerpts from manuals published by the West Publishing Company and Shepard's Citations, some original textual comments and a portion from Dwyer, *Visual Outline of Legal Research* (1936). Then follows eighteen problems requiring the use of law books in their solution. Class sessions are devoted to supplementary lectures[40] on the features of specific law books, discussions of assigned problems to be handed out and questions of students. The problems actually

[85](1949).
[86]Cheatham, Cases and Other Materials on the Legal Profession (1938).
[87]Pirsig, Cases and Materials on Judicial Administration (1946).
[88]Pirsig, *Op. cit. supra* Note 37, at preface, p. VIII.
[89]Correlated, but not necessarily integrated, with this is a series of no-host toastmaster's luncheons sponsored by the Phi Alpha Delta Law Fraternity. Monthly meetings include talks by students and guests on previously assigned topics, some of which intentionally include legal ethics and judicial administration.
[40]Students are also required to secure copies of Price, A Practical Manual of Standard Legal Citations (1950). An outside exercise on citations is assigned.

fall into two distinct categories. The first category consists of a series of problems which require the students to become acquainted with the types and forms of law books, by working out rather mechanical solutions to questions.[41] After this series is completed, the students then proceed to tackle problems demanding more of the intellectual component.[42] It is recognized that many students will not do their work alone, and, notwithstanding pedagogical philosophies, since lawyers oftentimes attempt to do their research cooperatively, the students are assigned to teams. For the first series, students are divided into teams of two, with the professorial plea that each person attempt to do his own work, as far as possible. For the second series of problems, teams are composed of four students each. It is hoped that this, in effect, makes each student an individual instructor for the others in his team during the course of actual research. Since the two series of problems are worked out on a cooperative basis, no attempt is made to assign an alphabetical or numerical grade to the papers. Instead, the papers are measured up to a rather high and nebulous standard of near-perfection and graded either as "acceptable" or "unacceptable." Obviously, this requires at least a tacit correlation to some qualitative and quantitative standard, but since both the instructor and the materials, as well as the students, may be at fault, no specific standard is established until all of the papers of a particular set are examined.

The two series of problems are planned to proceed through two degrees of increased complexity involving legal research. There remains still a third hurdle. Some time during the senior year, the student must write an acceptable comment in law review style. This necessarily must demand and involve greater detail and research. It is hoped that the students are prepared more adequately for this by the previous exercises.

What is the appraisal of an introductory course such as described above? At this writing, it is perhaps too early to comment with any degree of validity. The course is being offered for the first time at Montana State University, and must necessarily undergo some of the vicissitudes of a law school curriculum. Hardy survivors of the "sink or swim" school, besides the usual "it was good enough for me" argument, will contend that good students will get by anyhow, and nothing will help the poor ones.

[41]e. g. Has Montana adopted the uniform sales act?
[42]e. g. Dowling, p. 293, Problem 3: "The extent to which drunkenness can be used by a man charged with homicide to eliminate or to lessen the severity of his punishment." The problems in both series will not be used more than once.

Past performances may substantiate this, but certain tentative observations, based on the limited experience with the above course, can be offered. One colleague observed that, while there was no qualitative improvement in the content of the examination answers, at least they were more carefully organized, and, both in writing answers for law school examinations as well as reciting in class, the students seemed to understand more clearly what was expected of them. Another instructor, agreeing with this finding, observed further that examination answers did not appear to be stereotyped in form. On the other hand, another faculty member could not notice any perceptible change. A subsidiary development that may be worth mentioning is the tendency on the part of many of the students to turn to their instructor in Orientation, Ethics and Bibliography for counsel and guidance during the law school career even though formal avenues are available elsewhere. While not originally bargained for, though totally valued and enjoyed by the instructor, this availability of an informal "mother confessor" is not to be underestimated if intelligently handled and pursued. In the last analysis, probably there is no final answer as to the desirability and utility of an introductory course any more or less than there is for any other course in the curriculum. However, if this writer's opinion is acceptable in any degree, the desirability of the introductory course can best be expressed by paraphrasing the advertising slogan of a well-known eastern shoe merchant: "Good students deserve it; bad students need it."