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LEGAL EDUCATION IN THE UNITED STATES*

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Today, law schools train all but an insignificant fraction of those who are admitted to the Bar in this country. Thirty-three states and the District of Columbia require such training. In the seventeen states in which it is not required by law, very few attempt to take the Bar examination without it—and even fewer pass.

Last fall, according to the Review of Legal Education published by the Section of Legal Education of the American Bar Association, 54,433 students were enrolled in 157 of this country's 159 law schools. Two law schools which are unapproved by the American Bar Association failed to report their enrollments.

By way of comparison the following statistics may be of interest. A decade ago approximately 42,500 students were enrolled in the law schools of this country; in 1930 approximately 47,000 were enrolled; in 1920 approximately 24,000 were enrolled; and in 1900 the enrollment was approximately 12,000. In 1900 there were 102 degree conferring law schools. This number increased to 146 in 1920 and reached an all-time high of 190 in 1940. Today it will be recalled there are 159. This downward trend in the number of schools is matched by a rising trend in the number of schools approved by the American Bar Association. Thus in 1940 less than half of this country's law schools were so approved. Today almost seven-eightths are approved. Relating total law school enrollments to the population of this country discloses that in 1900 there was approximately one law student to 6,300 persons. In 1930 the ratio was approximately one to

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2,600; in 1953 one to 4,000; and in 1963 one to 3,500. In considering these statistics, it should be borne in mind that at the turn of the century a great many of those studying for admission to the bar were not enrolled in law schools, but were serving office apprenticeships.

About ninety-one per cent of last fall's 54,333 law students were enrolled in law schools approved by the American Bar Association. Seventy-six per cent of these students pursued full-time programs of study and twenty-four per cent were enrolled in part-time evening classes. Eighty-nine per cent of the students attending unapproved law schools last fall were enrolled in part-time evening classes.

One hundred thirty-six law schools are now approved by the American Bar Association; 109 of these are members of the Association of American Law Schools, which has somewhat higher standards than the American Bar Association, and 24 are neither members of the Association of American Law Schools nor approved by the American Bar Association. Most of these unapproved schools are private, proprietary undertakings, unconnected with any university and conducted for profit. Their influence has declined sharply in the past quarter of a century. Thus, 60 per cent in 1928, 55 per cent in 1936, 14 per cent in 1952 and only 9 per cent last fall of this country's law students were enrolled in unapproved law schools.[1]

The trend disclosed by these percentages suggests that in the reasonably near future virtually all law students will be enrolled in approved schools. It seems to suggest also that the approved schools are doing a reasonably good job in discharging their responsibilities. To my mind these responsibilities are four-fold: First, is the obligation to train young men and women of integrity and demonstrated intellectual ability for the practice of law as a learned profession demanding of its votaries a far higher standard of conduct than is acceptable in the marketplace; second, is the obligation to nurture and support legal research; third, is the obligation to assist the appropriate agencies of the state and the organized Bar in improving the administration of justice; and fourth, is the obligation to cooperate with the organized Bar in arranging continuing legal education programs for practicing lawyers.

Critics of the contemporary law school for the most part direct their criticism at the alleged failure of the schools to discharge effec-

[1]The statistics reported in the text are taken from Review of Legal Education of the A.B.A. for the years mentioned; Proceedings of Association of American Law Schools, 1962; American Bar News for June 15, 1948; Hurst, The Growth of American Law 28 (1950).

tively the primary responsibility of training students for the practice of law. The target of much of this criticism is the case book method of instruction, which is attacked as being too time-consuming, as giving a distorted picture of law by focusing the attention of students almost exclusively on appellate court opinions, thus failing to emphasize the significance of trial courts, administrative bodies, the legislative process and statutes, and as tending to isolate the study of law from the social, political, and economic context in which it functions and develops.

The contemporary law school is also criticized for alleged failure to give students adequate training in legal know-how, such as drafting legal instruments, examining titles, in trying cases, appellate advocacy, conducting negotiations, and other practical skills.

Champions of modern legal education insist that the case method excels in training students to think clearly and exactly, to analyze and synthesize, to sift the relevant from the irrelevant, to beware of overgeneralizing, and to seek constantly for the reasons in policy and doctrine underlying legal rules and principles. They also point out that in most law schools today the case method of instruction is supplemented by the problem method, by seminars, and by courses not using case books. Attention is also directed to the wealth of textual materials and samples of legal documents to be found in the modern case book. These cases and materials stand in sharp contrast to Langdell's *Cases on Contracts* published in 1871, which was devoid of notes.

The courses in trial, appellate, and office practice and the participation by students in legal clinics and moot courts are cited by way of answer to the criticism that the law school of today fails to provide training in legal know-how. It must be conceded, however, that this training is not as effective as that which the student received under the old apprentice system, properly administered. There simply is no substitute for the live client and the actual case. Furthermore the actual cases students encounter in legal aid clinics are, in my experience at least, limited for the most part to collections, family problems, landlord and tenant controversies, and like matters. The businessman, the corporation, and the economic royalist do not come to the legal aid clinic; nor typically does the tort claimant. The institution of the contingent fee ordinarily assures him counsel of his choice.

To ask, as some do, that law schools give law students clinical training comparable to that now received by medical students is in my view to ask the impossible. Generally speaking mental and physical ills are common to all mankind, poor and rich alike. Hence a medical

clinic can give the intern a breadth of training which a legal clinic cannot hope to emulate. Only the law office can give the legal neophyte training equivalent to that of a medical intern. The law school's emphasis, therefore, is likely to continue to be on know-why and know-what rather than know-how. But this is merely a matter of emphasis. Most law students are now receiving at least elementary training in a number of lawyer-like skills.

And I venture to predict that law schools will offer their students more training of this type in the years to come, but I believe that the most significant developments in practical skill training for legal neophytes will be made by State Bar Associations through an expansion of their continuing legal education programs. In this connection the Second National Conference on the Continuing Education of the Bar, which was held at Arden House last December, reached the following conclusions that may well foretell future developments.[2] After recognizing that there are "areas of instruction centering in practical skills which are not appropriate for inclusion in law school education" the Conference stated that "instruction in these areas should be provided by the profession. Apprenticeship and clerkship programs have not been found adequate for this purpose."

> "The continuing legal education program is the means through which instruction of newly admitted lawyers in practical skills should be provided. The public interest would be served by a requirement that applicants for admission to the Bar complete a comprehensive course in practical skills before final admission. Such a requirement is justified, however, only when the scope and quality of the course offered are found to be adequate to meet the need. * * * Until such a requirement is adopted, there is need for continuing legal education on a voluntary basis to bridge the gap between law school graduation and practice."

Next summer the New Jersey Institute for Continuing Legal Education will offer a course of twelve weeks' duration, which is intended to serve as a review for the New Jersey Bar examination and to provide practical skills training for those enrolled. Successful completion of this course will be accepted in lieu of the nine-month clerkship now required for final admission to the New Jersey Bar.

I doubt that the New Jersey experiment will be emulated in many other states. My guess is that in most states bridge-the-gap-practical-

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[2]See Final Statement, Second National Conference on the Continuing Education of the Bar, Arden House, December 14-17 (1963).

skills-training will be provided by State Bar Associations on a voluntary enrollment basis for those recently admitted to practice. It seems to me unlikely that the successful completion of such training will be required for admission to practice. The present on-the-job training provided by many law firms seems to be working reasonably well for the clients, the newly admitted practitioner and the partner.

Having assumed the role of prophet I now dust off my crystal ball and hazard the following guesses concerning future developments in American legal education.

My first guess is that most law schools will require a college degree of most applicants for admission. Presently 55 of the 136 law schools approved by the American Bar Association enforce the degree requirement. By 1975 I predict that at least 100 law schools will enforce such a requirement. But I also prophesy that an exception to the requirement of a college degree will be recognized in favor of brilliant high school graduates who enroll in a well integrated program of pre-law and law school work designed to be completed in the equivalent of six academic years. Implicit in this prophecy is the belief that such an integrated program will be developed. Admittedly this has not thus far been accomplished. Recently, however, a similar program has been developed very successfully at Northwestern University for academically outstanding high school graduates who are interested in studying medicine. To my mind it makes great sense to inaugurate similar programs in law schools.

In terms of academic qualifications the requirements for admission to law schools are now keyed only to college records and law school admission test scores. So far as I am aware, no law school reaches back to the high school graduates, selects those of demonstrated brilliance and aptitude and provides for them the equivalent of a six-year course of study, which, in the Jeffersonian tradition, offers instruction concurrently in law and disciplines related thereto, such as history, political science, psychiatry, accounting, economics and other subjects.

My second guess is that in time most American universities will award the J.D. as the first degree in law to those students who entered the law school with a college degree and satisfactorily complete the required program of study for graduation. Presently only 25 approved law schools do so, but the trend seems to be running in that direction. The Association of American Law Schools' 1963 Round Table on Law School Administration recommends the J.D. as the first degree in law. Also the 1963 Special Committee on Graduate Instruction of that Association concludes its report as follows: "The adoption of the J.D.

degree * * * is recommended to all schools * * * which are for any reason making a revision of their degrees or degree requirements."[3]

Champions of the J.D. degree contend that " it is absurd to award a second bachelor's degree, for advanced professional work, to those who already hold a first bachelor's degree. If graduates of schools of medicine, dentistry, osteopathy, veterinary medicine, chiropody and optometry, none of which must have a bachelor's degree for admission, are to receive professional doctorates, why should the law schools lag behind? It simply does not make sense."

The language just quoted is taken from the remarks made by Dean John G. Hervey at the Round Table on Law School Administration which was held at the Annual Meeting of the Association of American Law Schools in December 1963. Dean Hervey is now and for many years has been the advisor to the Section of Legal Education and Admission to the Bar of the American Bar Association.

Practical objections to the award of the LL.B. instead of the J.D. are as follows: First, in some universities the LL.B. is regarded as merely another bachelor's degree, which is outranked in academic protocol by even the Master of Science and the Master of Arts. Second, the report of the Association of American Law School's 1963 Special Committee on Graduate Instruction states a "practical effect of the award of the LL.B. rather than the J.D. is the fact that promotions within the Federal Government are reported to be more readily achieved by those who hold doctorates than by those who hold the LL.B." In addition "the National Defense Education Act in some respects is more generous in its provision for those holding doctorates than for other degree recipients."[4]

It is true that the LL.B. long antedates the J.D. in the history of American legal education, but it is well to remember that when the LL.B. was first recognized in America in the nineteenth century no law school required a college degree for admission and, as we have already learned, in many law schools, the requirements for admission were lower than those required for admission to the college of letters and science of the parent institution.

The J.D. was first awarded by the University of Chicago at the turn of the century. About the same time the Harvard Law Faculty also recommended the adoption of the J.D. as the first degree in law,

[3]A.A.L.S., Program 1963 Annual Meeting of the Association of American Law Schools 171.

[4]Id. at 169.

but this recommendation was turned down by the Corporation.[5] It seems highly unlikely that Harvard will shift to the J.D. at any time in the foreseeable future. Its failure to do so will no doubt operate as a brake on what seems to be the movement toward the J.D., but I doubt that it will arrest that movement.

My third guess is that law school admission policies will become increasingly selective and the means of predicting an applicant's success in the study of law will become much more reliable than those now in effect. A very recent study by a committee of the Association of American Law Schools discloses that only 60.6 per cent of those who were enrolled in law schools in the fall of 1958 were graduated. By way of contrast 93 per cent of those who entered medical schools as first year students in the fall of 1958 were graduated.[6] Obviously a selective process associated with an attrition of almost 40 per cent leaves much to be desired. Perhaps no test can be devised to measure motivation, emotional stability, and industry. But the relative success of the admissions procedures of the medical schools suggests that much more can and should be done to improve the procedures now used in selecting those to be admitted to the law schools.

My fourth guess is that an applicant for admission to law school will not be accepted unless and until he has passed a test designed to determine his proficiency in communicating orally and in writing. Law teachers seem to be in general agreement that a surprisingly large segment of the law students of today and the recent past are deficient in their understanding of such basic and elementary matters as grammar, sentence structure, paragraphing, and punctuation. This sad state of affairs has led a number of law schools to offer courses intended to correct these deficiencies. These courses preempt time that would otherwise be devoted to the study of law. An admission test that would satisfactorily screen out those applicants who are deficient in written communication would eliminate the need for legal writing courses and would thus remove from the curriculum a subject which a law student should have learned before he entered college.

My fifth guess is the obvious one that as the years pass there will be changes in the subjects that are taught in the law schools. The curriculum of a law school should be attuned to the demands of the practice. Needless to say, these demands are responsive to social, eco-

[5]Reed, Present Day Law Schools in the United States and Canada 79 (1928); Stein, The Juris Doctor, 15 J. Legal Ed. 315 (1963).

[6]Report of Committee of the Association of American Law Schools of which Dean Reese of Willamette was Chairman, 1963 (mimeographed).

nomic, political, and scientific developments. Consider, for example, the tremendous growth in the past thirty years or so in the practice of Administrative Law, Taxation, and Labor Law. Contrast the prominent positions these subjects now occupy in the curriculum of a modern law school with their absence from most law school curricula of the 1920's. And although criminal law is one of the most venerable, if not venerated, subjects in the law school curriculum, I predict that under the stimulus of recent decisions requiring defense counsel for accused the law school of the future is going to devote far more time to instruction in criminal law, criminal procedure and the rules of evidence in criminal cases than has been true in the past.

I conclude this guess on the future subject matter of law school curricula by emphasizing the verity of Dean Griswold's observation that if law schools

"[R]egard subject matter as their sole objective they will almost surely fail to serve their students well. What they must teach is background, method, traditions, approach. Their students must know how to face problems, how to deal with new materials, how to go about getting to the bottom of a subject with which they have had little previous contact. Very likely these subjects will best be taught by classroom consideration of specific topics of the law as it is now. But neither teacher nor student should be lulled into thinking that this law bears close relation to the law which is likely to engage the attention of the student when he becomes an experienced practitioner."[7]

My sixth guess is that law schools, working in cooperation with the organized Bar, will greatly expand their continuing legal education programs for members of the Bench and Bar. The constantly growing complexity of the law dictates that the general practitioner periodically receive instruction from specialists in order to keep abreast of developments. The workshop for appellate court judges which New York University has conducted for some years, and the course for newly appointed trial judges which is to be conducted at the University of Colorado this coming summer, attest the growing interest of judges in continuing legal education programs.

My seventh guess is that there will be a substantial increase in the ratio of faculty to students in the law schools of tomorrow. The mass, assembly line training that is now characteristic of legal education in many of the larger law schools of this country will, I be-

[7]Griswold, The Future of Legal Education, 5 J. Legal Ed. 438, 442 (1952).

lieve, be modified in the years ahead in response to what I predict will be an insistent demand for relatively small classes. This demand will stem from the inherent nature of the casebook method of instruction which, it seems to me, is likely to continue to be the most widely used method of instruction for first and second year law students.

The Socratic dialogue of the casebook system demands active student participation in classroom discussions. Large teaching units tend to stifle that participation. The discussion is likely to be dominated by the aggressive few in the class. Most members of the class tend to remain silent until called on and in a large class they may not be called on more than once or twice during an entire semester. Most members of the class thus assume the role of spectators rather than participants most of the time. As a result they lose much of the benefit of the case system. Reducing the size of classes unaccompanied by a reduction in the overall enrollment will, of course, require an increase in the size of the faculty.

Also, if, as I believe will be the case, most of the instruction in the third year will be offered in seminars by the problem method, within the next decade a further increase in the size of the faculty will be required. And, if, as seems to me probable, the time comes when the law student in his senior year is offered the opportunity to do individual work under close faculty supervision, there will be need for an even larger faculty.

My eighth guess is that in the years to come there will be a substantial increase in the funds allotted to law schools for legal research. During the past quarter of a century law professsors have been called on more and more often for the research essential to law revision and reform. Witness for example their contributions to the various restatements of the law, to the uniform acts sponsored by the Conference of Commissioners on Uniform State Laws, and to the revision of state statutes. I suggest, however, that if law schools are to realize their potential as centers of legal research, they must receive substantial research grants. This is particularly true of interdisciplinary research. Although the law library will probably remain the favorite habitat of most legal researchers, I predict that more and more interdisciplinary research will be undertaken. Thus it seems likely to me that there will be a substantial increase in empirical research conducted by teams of researchers recruited from various disciplines with the legal scholar on each team serving as the captain of the team. These researchers will get out into the field and observe

and report on law in action. Typical of this type of research is the jury study conducted by the University of Chicago law faculty.

My ninth guess is that there will be an overall reduction of calendar time from high school to admission to the Bar because the trimester or four quarter system will become conventional in many of our colleges and universities with the result that a great many students will receive their degrees in three calendar years. Possibly law schools will also go on a trimester or four quarters a year basis. I hope not because I would like to see the now wide spread practice of law students working in law offices during the summer months become well nigh universal. Law office experience provides apprentice-like training that is an invaluable adjunct to law school instruction. It also provides a change of pace that is desirable. We learned as a result of the accelerated round-the-calendar programs following World War II that students and faculty become stale without periodic respites from the intensive application demanded by the modern law school.

My tenth and last guess is that the divergent views on the relative importance of training in practical skills and in legal theory that have characterized legal education in this country since colonial times, will continue unresolved in the years ahead. There will ever be those who would emphasize guild-like training for the practice of law as a craft and those who would emphasize the study of law as an intellectual discipline. But the Jeffersonian view of the relevance of social science materials in training students for the practice of law seems to be steadily gaining support and I predict will attain ascendency over the Story-Langdell insistence that the law students' attention should be focused exclusively on "Legal materials."

Abandoning the role of seer and looking backward over the history of legal education in the United States since the Revolution, the case book method of instruction and the student edited Law Review appear to me to be this country's most distinctive contribution to legal education. You may disagree with that conclusion, but I have every confidence that you will agree that the overriding obligation of the American Law School is to strive to inspire its students to practice law as an honorable profession demanding selfless devotion to the ideals of liberty and justice. John Randolph Tucker's career as practicing lawyer, public servant and law teacher provided that inspiration. I leave you with his words, taken from the address he delivered in 1877 to the graduating class of the University of Maryland Law School, and quoted by John W. Davis in the first John Randolph Tucker lecture. Here is what Dean Tucker said:

"Young gentlemen, let me beg you to take no low or unworthy views of your calling. I do not disparage the glorious privilege of making a competent independence by your honest industry. But let not this lead you to a love of Mammon as one of the objects of your great mission in life. Do not degrade the noble aspirations for moral achievements to a sordid and groveling devotion to the accumulation of wealth. See first the moral rewards of professional labour and genius, and be sure its material recompense will be added unto you.

"In the needed reforms of the law, it will be yours to take part. This should be done by avoiding as well a blind adherence to ancient systems, as a too ready adoption of every new device which promises amendment. Many think everything good because old, and everything evil because new; others directly reverse these propositions. Neither is right; both are in error. Change is not reform; nor is blind conservation of the established order of things, wisdom. You may derive a profound canon for conservative progress from Lord Bacon. He says: 'I dare not advise to cast the law into a new mould. The work which I propound tendeth to pruning and grafting the law, and not to ploughing up and planting it again; for such a remove I should hold, indeed, for a perilous innovation.'

"But above all, because inclusive of all, let me beseech you here, at the altar of your Alma Mater, and in the presence of God and of this noble audience, to prepare, by solemn consecration, to advance the right and destroy the wrong; to promote justice and defeat iniquity; to defend the oppressed and assail the oppressor; to protect freedom and oppose tyranny; to uphold the institutional liberties of your people and to guard them against all usurpation; and so, keeping your hands clean, your heart pure, and your mind nobly aspirant to achieve these high purposes, may you serve God, honour your country, do good to your fellowmen, and thus merit the honourable epitome of a well spent life."[8]

[8]The John Randolph Tucker Lectures 1949-1952, 35 (1952).