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LAW SCHOOLS AND PRACTICAL TRAINING

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IN a recent issue of the *American Bar Association Journal* there appeared an article by a prominent attorney of this state which amounts to a sweeping indictment of law schools and bar examiners.[1] It is charged therein that law schools do not do as much as might reasonably be expected of them in preparing the student, upon graduation, to give "adequate, competent lawyer-service".[2] The subject is controversial, the treatment provocative, and it is not unexpected that replies have already appeared in print.[3]

It is not the purpose of the present memorandum to take sides or join in the controversy. Rather, its purpose is to recognize the ever-present problem of preparing the law student adequately for the infinite variety of situations he may encounter in the broad and ever-broadening field of legal practice; and to undertake to point out some of the difficulties involved in any effort to find a satisfactory solution of the problem.

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1 Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952).

2 Mr. Cantrall says: "It seems to me, as a *minimum*, that he should be competent . . . to examine a title; write a deed and other customary instruments; close a real estate deal; institute and prosecute suits, including the statutory proceedings of his jurisdiction; defend a criminal; prepare individual, partnership and estate plan; prepare and probate a will; administer an estate, with the federal and state returns, etc.; and form, operate and dissolve an individual proprietorship, a partnership and a corporation, including compliance at each of these stages with all the requirements of federal, state and local laws, tax and otherwise, applying to a small business. . . .

"It goes without saying that a proper law course would include instruction on the management of a law office, the handling of clients, the development of a practice, the charging of fees, practical legal ethics, and the benefits flowing from participation in professional organizations and movements."

3 *Braucher Replies to Lawyer's Charge that Professors Fail to Do Good Job*, 15 Harvard Law School Record No. 9 (Nov. 26, 1952). Reply by Ritter, 39 A.B.A.J. 69 (1953); McClain, *Is Legal Education Doing Its Job?*, 39 A.B.A.J. 120 (1953).

This is not a new subject. A discussion thereof does not amount to a startling discovery of a new problem among lawyers and law schools. The problem of making legal training more practical has furnished a subject for much study, investigation and experimentation. Lawyers and bar associations have contributed valuable suggestions and helpful assistance. Law schools quite generally appear to have recognized the problem. They have not attained perfection in preparing the graduate for the problems he must encounter in practice. But it would be utterly unfair to seek to give the impression that they are unaware of the challenge, or that they have failed to make earnest efforts to meet it.

It must be recognized that the training furnished by law schools is quite largely that which has been called "theory", as distinguished from the "practical". It is not true, however, that law schools deal with "theory" as distinguished from fact. If a law student is taught that the law relating to a given situation is this or that, this means that the student is given a fact, not a mere abstract theory.

Lawyers of an earlier day in this country obtained their legal training largely from "reading law" in the offices of established practitioners. Training of this nature was practical in the extreme. Perhaps somewhere between the system of "reading law" and the modern law school methods, or somewhere in a combination of the best features of each, lies the ideal balance between practice and theory. The danger is that we may be "impractical" in suggesting a means or method by which that desirable end may be attained.

The standard course of study in law schools is three years. A law student can not enroll in *all* the important or desirable courses of study. The three-year period of time is not sufficient. Therefore, when he elects to take certain courses he must necessarily forego others which may be just as important or desirable. Both the students and the law schools labor under the great pressure of this time element. There is barely adequate time—certainly there is not an abundance of time—in which to equip the student with a minimum knowledge of basic law, or "theory". Therefore, it follows that all additional time devoted by the law school to "practical" training must be at the expense of the fundamental training in the knowledge of law.

The field of legal training and practice is constantly expanding. This is evidenced by such recent subjects as administrative law,

labor relations and taxation. As the field of legal practice expands, the time element in law school training becomes correspondingly more acute.[4]

If the period of law school training is inadequate to meet all legitimate demands, and if for that reason some features of desirable training must be sacrificed, which portion is more fundamentally important to the young lawyer? Is it the "theory"? Or is it the "practical"? That is one of the practical considerations with which the law schools must wrestle.

It has been suggested that a year be eliminated from the pre-law college training and a year added to the actual law school course. Known as the Two-Four-Year Plan, this scheme has been tried by some law schools, but has not gained widespread acceptance. It has been suggested that law schools add a fourth year of optional study, with an additional degree, to be devoted more exclusively to practical studies. This gives undue length to the course of study; it involves additional expense both to the student and to the law school; and the suggestion carries practical problems of implementation. Some law schools have combined legal aid clinics with the course of study.

A system of apprenticeship has often been suggested. This would necessitate work by the law graduate, for at least a period of months, in a law office. It would involve further expenditure of both time and money on part of the young lawyers who quite generally are financially impoverished and otherwise under the pressing necessity of getting started on their own. In West Virginia, for instance, it is doubtful that sufficient places could be found each year in law offices for the new crop of graduates; it is doubtful that those in charge of such law offices would be willing and able to devote sufficient time and effort to the apprenticeship to make it of practical value and more than perfunctory in nature; and

[4] For instance, in 1949 the Iowa Law School extended the course of study from three academic years, of two semesters each, to three and one-half academic years, aggregating seven semesters. In a report to the bar, Dean Mason Ladd, commenting upon this problem, states: "Society today requires professionally trained men to assume many responsibilities of which the traditional law school curriculum took no cognizance. Developments in such fields as taxation, administrative law, economic regulation, estate planning, labor law, patent law and international law require this generation of law graduates to be ready for assignments either unknown to preceding generations or restricted to specialists. Yet there is the ever important task of giving the law student the basic understanding in the traditional courses which yielded little chance of elimination, or even reduction of content."

it might be difficult to find lawyers or law offices qualified by experience to give the varied practical instruction which would be desirable. In any event, to make the apprenticeship of appreciable value it would have to be of considerable duration.

Every person who has ever been graduated from a law school and commenced the practice of law can attest to the fact that a greater degree of practical instruction is desirable. But the sharp disagreement arises in relation to the degree to which, under any conceivable, practicable arrangement, law schools can reasonably be expected to supply the practical training which some members of the profession expect or demand. It is doubtful it there could ever be any fair degree of agreement among practicing lawyers as to where the emphasis should be placed in efforts at such practical instruction.

There are those who feel that law schools are not adequately training lawyers for public service.[5] In this connection it is pointed out that a great proportion of law school graduates enter innumerable branches of public service, where they so largely shape the policies of government; that all of our judicial positions are held by lawyers; that lawyers dominate the legislative branches of the federal and state governments; that in these various elective and appointive public positions lawyers make and shape our laws and dominate the policy-making of government. It is said in this connection that the administrative agencies represent the "fourth" branch of government, so great is their importance. They are largely dominated, steered and shaped by an army of lawyers, who have been given no particular form of training in that field. Therefore, it is asserted that "practical" training of this type must be included in the curricula of the law schools.

It is doubtful that the practice of medicine is more complex or varied in nature than the practice of law. Yet medicine is a field of greater specialization. In that profession are surgeons, dermatologists, gynecologists, pediatricians, neurologists, and specialists in many other diseases or portions of the human anatomy.

We of the legal profession have not attained a corresponding degree of specialization. Consequently there are those who apparently feel that a law school must furnish to each of its students instruction which, upon graduation, will enable him forthwith

[5] BROWN, LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE (1948).

to serve the public in any one of the innumerable situations which may confront the young lawyer in a general practice of his profession.

This would require a greater versatility and a greater diversity of practical knowledge than we find among practicing attorneys of many years' experience. There is a definite limit upon the variety of fields of practice in which any attorney may become proficient in "practical" knowledge and experience. Many very prominent lawyers of long experience are as fish out of water in many fields of hornbook law in which less prominent and less experienced lawyers are much at home.

Experience has demonstrated that the outstanding practitioners who embody a happy combination of adequate academic training and broad practical experience are not available as instructors at the salaries law schools are able to pay. Furthermore, it is probably true that the more prominent the average attorney becomes the more limited or specialized becomes the field of his practical experience.

There is a limit to the capacity of even the most mentally alert students to grasp, assimilate and to retain for any appreciable length of time any considerable mass of practical knowledge. For example, the law school may instruct the student in all the practical details and steps involved in the formation of a corporation, or in appellate procedure. It is extremely doubtful that the average young lawyer encounters either of these problems within the first several years of his practice. Indeed, it is doubtful that the average practitioner in this state is called upon to deal with such problems with such frequency that he may safely trust to his recollection growing out of his practical knowledge and experience. Lawyers and judges in their work are under the necessity of being right, so far as their energies and mental capacities will permit; and no matter what may be the extent of their practical experience prudence dictates that there is no suitable substitute for the necessity of frequent, studious re-examination of forms, statutes and precedents, no matter how frequently such may have been involved in previous practical experience.

A law school must deal with the problem of unduly restricting the practical instruction in accordance with the laws of the state in which it is located. This does not apply so much, perhaps, to the law school of this state as to Harvard and many others, which

draw their students from numerous states. It is obvious, however, that detailed instruction in the various steps involved in the formation of a corporation or in appellate procedure, as such matters relate to West Virginia, would be of doubtful value to law graduates who may practice their profession in other jurisdictions.

If we take the example of forming a corporation and that of the application for and prosecution of an appeal or writ of error, and if we multiply these by hundreds, we get some idea of what might be desirable in the instruction of law students in relation to situations which may be encountered in practice. There is involved not only the element of time available for such instruction, but also the limitations upon the human mind in grasping and assimilating such matters and retaining them until they may be actually needed.

At the instance of the Board of Governors of West Virginia University, a Visiting Committee for the College of Law has been functioning for the past few years.[6] One of the primary functions of this committee is to "help bridge the gap between academic procedure and professional practice, and afford the instructing staffs expert comment and appraisal."[7] The Committee has met on various occasions with members of the faculty of the Law School and at all such joint meetings this proposition of making instruction more practical has been perhaps the chief topic of discussion. The Committee has made recommendations in this connection from time to time.[8]

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[6] The Visiting Committee for the College of Law was appointed by President Irvin Stewart in November, 1950. In addition to Judge Calhoun, members are Herbert S. Boreman, Chairman, Parkersburg, James M. Guiher, former Chairman, Clarksburg, Henry S. Schrader, Wheeling, and Honorable Frank C. Haymond, Judge and President, Supreme Court of Appeals, Fairmont.

[7] The Board of Governors' resolution of November, 1946, defined the purpose of Visiting Committees at West Virginia University as follows: "It is the expectation of the Board that by periodic investigation and by holding conferences with the staff, the Visiting Committees will stimulate the departments, schools and colleges to operate with maximum effectiveness; that they will bring to the staff the point of view and needs of industry and the professions, help to bridge the gap between academic procedure and professional practice, and afford the instructing staffs expert comment and appraisal."

[8] (a) It was recommended that the students receive instructions in the form and content of the various types of legal instruments in connection with the several courses to which such instruments may be pertinent; for instance, forms of corporate charters, by-laws, minutes of the first meeting of stockholders, etc., in connection with course in Corporations; (b) that lectures in legal ethics be included in the curriculum, with attendance compulsory; (c) that the faculty cooperate with the bar in the establishment and furtherance of an arrangement whereby law students may be enabled to spend the summer vacations in law

What is said herein does not purport to represent the views of any of the other members of the Committee. Nevertheless, from his experience on the Committee since its inception, this writer is of the opinion that all members of the Law School faculty are receptive to all suggestions designed to make instruction more practical. They have cooperated in an effort to carry out suggestions which have been made. They have displayed an awareness of the problem, coupled with a willingness and a desire to make the instruction as practical as the situation will permit.[9] Certain members of the faculty have enjoyed considerable experience in the practice of law but such practical experience does not appear to supply a ready answer to all the practical difficulties involved in the task of infusing practicality in legal education.

No matter how we may feel about the extent to which the Law School gives "practical" instruction, there appears to be marked unanimity among judges and practicing lawyers of the State in the view that instruction in "theory," at least, is reasonably adequate.

The extent to which any attorney may become equipped to deal with all conceivable situations in a "practical" manner is solely a matter of degree. No attorney can ever know how to proceed readily in *all* situations in practice. Any system of legal training may hope to give some instruction of a practical nature, but the success of such efforts must always remain a matter of degree. It is doubtless true that such practical instruction may be injected into legal training to the "point of diminishing return"; that is, to the point beyond which further practical instruction

offices; (d) that a reasonable number of lectures by practicing attorneys upon various practical subjects be supplied; and (e) that, in general, there be injected "a modest amount of practical approach and instruction into the recognized and long-established courses of the regular law school curriculum."

[9] As a consequence of the suggesting by the Visiting Committee, a one-hour course entitled "Ethics of the Bench and Bar" has been supplied. Practice court sessions, with judges of circuit courts and of the court of appeals presiding, are provided for seniors; lectures on practical legal subjects are being given by West Virginia lawyers, under the sponsorship of the State Bar; and a course entitled "Drafting Legal Instruments" is offered to the student. On this subject, the Visiting Committee has reported, in part, as follows: "We believe it is fair to say, therefore, that the degree of practical instruction now available at the College of Law is probably equal to, and in some respects doubtless greater than, the instruction which is given in other law schools of the country."

must be at the expense of important theory, or knowledge of substantive law.

There is not much of a practical nature which may not be learned somewhat readily in practice. Indeed, that represents a process which continues as long as one remains in the practice of law. But unless a lawyer is fundamentally grounded in theory, in knowledge of law, he labors under a handicap which he may never be able to overcome.

We who are engaged in the active practice of law are somewhat readily prone to level at the law school instructors the charge that they are impractical, theoretical; that they are not equipped by experience to give practical instruction; and that they are not disposed to give such practical instruction even if they were possessed of the necessary qualifications. Since we arrogate to ourselves this superior knowledge of matters relating to practice, is it not reasonable to suspect that those who have devoted much thought, study and effort to legal instruction know some things about that field of activity and its problems which we are not qualified by experience fully to comprehend?

If we in active practice will take the time to sit down with our professional brothers who are in charge of legal instruction, through the medium of the Visiting Committee, appropriate committees of bar associations, or as individuals, for open-minded discussion of the implications and difficulties involved in any possible solution of this great problem, we are very likely to undergo some transformation in our thinking upon the subject. If such could be done on a greater, broader scale, there would be less divergence in our thinking. Certainly we will contribute much more toward the ultimate solution or alleviation of the problem if our expressions upon the subject are restrained and temperate, rather than dogmatic, violent or biased.