The Failure of the Law Office to Give an Adequate Technical Education

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THE FAILURE OF THE LAW OFFICE TO GIVE AN ADEQUATE TECHNICAL EDUCATION*

By George E. Price**

The question which I have been requested to discuss is whether an adequate legal education can now be obtained by a student in a practicing lawyer's office. What I have to say upon this question is, of course, largely the result of my own experience and observation; in fact, a man can only discuss matters of which he has had some personal knowledge and experience.

It is well known that many lawyers of the past generation and quite a number who are still living and in practice, obtained all their legal training prior to their admission to the Bar, without having the advantages of a law school. This is so in my own case. My whole training for the Bar was obtained by study under a great-uncle of mine, a retired lawyer, a man of culture and learning of the old school. He had little to do except to direct my studies and quiz me upon what I had read, and discuss with me the legal and fundamental principles involved. Whatever success, therefore, I have had at the Bar, has been attained without the advantages of legal training in a regularly constituted law school—and this may be said also of a large number of the most eminent lawyers of the past in this country. Therefore, it cannot be denied that, as applied to the past generations and to those still living who were trained forty or fifty years ago, it was possible to obtain adequate legal education in a lawyer's office or under private tutelage.

But, times have changed, and the methods of education in all lines have changed with the times. There have been, perhaps greater changes in the laws and in the methods of acquiring legal knowledge than in almost any other profession or avocation.

I studied law in Frederick City, Maryland. Frederick City was a substantial town of 12,000 or 15,000 inhabitants, located in one of the richest and most beautiful agricultural sections of the east-

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ern part of the United States. It had a strong, well-educated Bar—if I should mention the names of some of the lawyers at that time, they would be recognized as leaders of the Bar of the country. As I recollect it, the legal business at that time consisted mainly of the settlement of estates, preparation and construction of deeds and wills, occasional actions involving land titles, actions of trespass and other torts including a few personal injury suits, suits relating to commercial contracts within what would now be considered narrow limits, and the usual limited criminal practice such as exists in that kind of a community. There were several law students or clerks in the lawyers' offices. It was the habit of all the lawyers to attend the session of the court at least part of the day. They frequented each other's offices, and met each other in the clerk's office or gathered in groups in the court house square in good weather. All took an interest in any important case that was pending and the questions involved, as well as politics and governmental affairs, were discussed. Forensic oratory was cultivated and elaborate arguments were permitted and were indulged in both before the court and the jury. The students in the law offices got the benefit of these free discussions of important questions of law, and of the dominant political issues and constitutional principles by men who were thoroughly competent to discuss them and who had sufficient leisure to enable them to keep abreast of the times. In those days the average lawyer had the time and he made it a part of his practice, so to speak, to supervise the studies of the law student in his office.

In those days there were no stenographers employed in law offices. The typewriter was almost unknown, as I recollect it, and the pleadings and deeds and legal papers were written out in long-hand, either by the lawyer himself or by the clerk in his office. In this way the clerk or student got the benefit of the actual preparation of legal papers.

The lawyer was a man somewhat apart. He was a public man, a servant of the public in a much larger sense than he is today. He was recognized as a leader and adviser of the people not only in legal matters, but in all public matters and he rightly regarded his position as one of great responsibility.

So it will be seen from what I have said, that it was possible for a student in a law office not only to obtain an adequate legal education, but to acquire the spirit of the law and absorb the higher sentiments of the leading men in the profession and in the community. He was educated, not only in the principles of the
law, but he could get the spirit of the American lawyer of that day; and this he could get in almost any community in the different states of this union. I, of course, can only speak of Maryland, Virginia and West Virginia; I know this was the situation in those states for the period succeeding the Civil War and up to 1875.

But there have been great changes in this country and in the world since those days. Of course, the courts had before them at that time many questions growing out of the Civil War, the readjustment of the rights of the states, and other great questions. But there was then but little development of corporate organization, such as we know it today. This phase of business developed rapidly, however. Its most important phase was the development of the great railroad corporations, their predominant influence in business, and their attempts at the control of political affairs, their discriminations between individual shippers and between different communities in the matter of rates and shipping facilities. This led to the agitation of the control of the railroads by the state, and the general government. It led to the discussion of questions of Interstate Commerce, of the powers of the general government as compared with the powers of the states in the regulation of railroad traffic. Laws were passed for these purposes and there was great litigation over these questions; and finally the law took the form of providing for railroad commissions, and the Interstate Commerce Commission was created by the Federal government, and the different Public Service Commissions were created by the states. These commissions were given control not only of the railroads, but of all other public service corporations. The questions as to how far the legislature could delegate its powers to a commission of this kind, and what was the scope of the powers of these commissions, and how far their decisions were binding, engaged the attention of the Bar and the courts throughout the country.

Then the great development of the wealth of the country led to the concentration of it by corporate organizations into what were known as the great industrial trusts. The word "trust" took on a new meaning, it really represented a feeling of "distrust" in the eyes of the public representatives in Congress and in the state legislatures. The great combinations were legislated against and the courts were called on to define their limitations and their activities or to dissolve them.

With the combinations of capital came, on the other hand great
combinations of labor often lead by radical leaders attempting to enforce their demands not by means of the courts or other agencies of the government but by their own power—by strikes, tying up the great industries in which they had been employed, refusing to work with anyone not a member of the union and producing a condition of terrorism by violence and destruction of property. Thus arose an attitude of antagonism on the part of the labor organizations against the organizations of capital. Out of this came what is known as collective bargaining.

The legislatures and the courts have had to deal with this troublesome and dangerous situation. How far can these combinations be controlled by law? Is the organization liable for the acts of its members? What control have the courts over these matters? How can these collective bargains be enforced? Is compulsory arbitration possible?

There has also been established by law what is known as the system of Workmen’s Compensation, doing away to a large extent with actions for personal injuries received by men in the course of their employment.

Within the time under discussion the gas engine has been invented, making possible the automobile and the aeroplane, also the great development of electricity, chemistry, the telephone, wireless telegraphy and many other inventions which have almost obliterated space and brought communities and the nations of the world closer together and making for better living and higher standards of all kinds.

Out of all these and many other things that might be mentioned in the economic world, has grown up an immense body of law unknown fifty years ago. This astounding expansion of the law has made it necessary for lawyers to acquaint themselves with a thousand things that the man of a past generation knew nothing of. The new statutes governing these questions fill many a volume, and the decisions of the courts have accumulated in such a way that it is impossible for anyone to keep in touch with them by anything like original investigation. In 1870 there were only 60 volumes of the Virginia Reports, covering nearly 100 years, now there are more than 120; West Virginia had five volumes, now 88; the Reports of the Decisions of the Supreme Court of the United States at that time were contained in 80 volumes, now there are 254; and this expansion has taken place to an even larger extent in many of the states of the union. So great has been the increase in the statute laws and in the law reports, that it has led
to a large number of compilations so as to bring the body of the law within the reach of the practicing lawyer. Every lawyer is now familiar with the "American Decisions," the "American Reports," the "American State Reports," the "Lawyers' Reports—Annotated" with its several series; the compilation known as "Ruling Case Law" and "Corpus Juris," the various encyclopedias of law and procedure in pleading and practice; the digest and Annotated Reports; in addition to the Reporter systems covering the various sections of the United States. None of these existed or were needed fifty years ago.

I have endeavored in this brief way to indicate something of the scope of the labors and the field of the activities of the modern lawyer.

He is no longer a man apart; in fact, he is merely an integral part of a great moving system. To be effective he must keep in touch with these rapid developments, both in the economic and political world and in the field of the law. He is obliged to keep up some knowledge of the trend of the decisions of the courts. He no longer employs a mere clerk or student to prepare his papers. He dictates his papers to his stenographer and they are reproduced and manifolded, upon the typewriter. He has but little time for anything else during his office hours except business; that is, if he is a competent lawyer and has attained to any responsible success in his profession. If he has not, then he could not make a very satisfactory tutor or instructor of a law student. He no longer sits in the chair in front of his office and discusses politics and public affairs. He no longer resorts to the court house and listens to the trial of cases in which he is not interested. When his office work is done he seeks recreation in his automobile; his family demands that he take some part in social activities. There is no chance for his giving any attention to the training of young men in his office for the Bar. Instead of having a young man to prepare his legal papers, it is now done by a smart young woman who has no aspirations for the Bar.

Now, what is the result of all this? The result has been the building up of law schools in almost every state in the country, the gathering of the young men who are studying law into the universities where they can give their whole time to the study of the law under highly educated and trained instructors specializing in the various branches of the law, and giving them the benefit not only of the fundamental principles of the common law, as it was fifty years ago, but also of the developments which have
taken place since then and of the trend and tendency of modern legislation and constitutional government calling attention to the latest decisions of the courts, and especially developing and analyzing the great fundamental constitutional principles upon which this free government of ours is founded. Thus, by the association with other young men from various parts of the country, by the influence and training of cultivated, patriotic lawyers directing their attention to certain specialized branches of the law, the young man is able to acquire such a legal education as will fit him for the strenuous, exacting duties of a practicing lawyer in these modern days; and in no other way can it be obtained, in my judgment.

The result of what I have said is that the practicing lawyer who amounts to anything has not the time nor the inclination and is not competent to give to a law student in his office adequate legal training. He is not competent because it is impossible for any lawyer nowadays to acquire and keep in mind a knowledge of the development of the different branches of the law so as to be able to impart it to others. We are obliged to specialize more or less, even where we have a general practice. We have certain classes of clients, and our attention is directed along certain lines. We become proficient in corporation law, in the law relating to railroads, in admiralty; or with us in West Virginia, in that branch of the law relating to the development of our coal mines, our oil and gas territory, and these things constitute almost a branch of the law of themselves. We must study the law of electricity and railroad law. Questions of interstate commerce are pressing upon us in our state of West Virginia constantly. Consequently, if the lawyer is engaged in practice along these lines, and he is employed in a case of a different character, he is obliged to go to work and revise his studies upon the new questions and ascertain what have been the more recent decisions governing it. It is not sufficient to go back to Kent, and Blackstone, to Chitty, and Greenleaf on Evidence; and he has not the time to keep up a comprehensive knowledge of all the branches of the law. But, in the law schools the different professors take different branches of the law, and the students have the benefit of their specialized knowledge. This immensity of the law reminds me of the old incident of the young fellow in Alabama who applied for admission to the Bar. The committee that was appointed to examine him, quizzed him for some time before dinner, and then after dinner when they were about to resume, the young fellow told them that
he had made up his mind not to go any further with it. When they asked him if he was going to give it up, he answered, "Yes; the law was very easy, but there's too damned much of it." If that was so in those old days, how much more is it true today?

I have mentioned before the manifest advantages of a student who has the benefit of training in one of our great law schools, as over one who had the kind of training that one gets in a law office. These young men come back after their three or four-years' course in the universities with a comprehensive view of the law and especially with the training that enables them to find out what the law is and go to its sources and analyze, and brief it. They can do their work much more easily and accurately than the lawyers of the old days.

The conclusion, therefore, is inevitable; that it is now almost impossible for a young man to acquire an adequate legal education simply as a student in a law office; but the provisions that are made for education in the law schools in nearly every state in the union, the facilities for travel, and the helping hand that is always held out to the worthy young man, render it possible for almost anyone to obtain the necessary legal training under competent professors in these schools. And very few who have the mental and moral qualities necessary to make real lawyers will be prevented from obtaining admission to the Bar by the requirement of a reasonable course of training in a law school.