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Law School Practice Courses and Moot Courts

Practice Court Work

BY CHARLES M. HEPBURN
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 FOR many years the Indiana University School of Law has had a system of Practice Courts as an integral part of its curriculum. The system consists of a court for the second semester of the first year, of another court for both semesters of the second year, and of a third court for both semesters of the graduating year. Each court is under the immediate direction of a member of the Law Faculty, who selects the cases to be tried, criticizes the pleadings, and supervises the trials. Every case is tried before a bench of two or three “associate justices,” selected by the professor in charge from the student members of the court, and appointed for the particular case. At an adjourned session, after the argument of the case by attorneys selected for the plaintiff and the defendant, each associate justice reads and files a seriatim opinion, which also comes under the criticism of the “chief justice.”

The work of the students in these courts, if successfully completed and certified to by the professor in charge, carries credit which is counted on the seventy-two hours of subject credit required for the LL.B degree. One semester hour of credit is possible in the first year Moot Court, two are possible in the second year, and four in the third year. The result is that the student can acquire through this Moot Court work about one-tenth of the entire subject credit necessary for his first degree in law. This subject credit, aggregating seven semester hours, is in addition to twelve hours of subject credit which may be obtained by the successful completion of classroom procedural study in Common-Law Pleading, Code Pleading, and Evidence. Of these nineteen hours, five are required for graduation, four of them in Common-Law Pleading, and one in the first year Moot Court.

This system raises various questions. The importance of the inductive study of the principles of Common-Law Pleading, Code Pleading, and Evidence may be granted; but why should a law student spend about one-tenth of his time in Practice Court work? The principles of Anglo-American substantive law are crowding the three-year curriculum to its limits. Every year the pressure becomes greater. In justice to our students, should we give so much time to the Practice Courts? Why not leave this kind of work to voluntary clubs, formed by the students themselves, and conducted without graduation credit? Apart from this, if a law school offers so much credit for Practice Court work, does it not encourage in its students a rule of thumb habit of thought, instead of the habit of a reasoned judgment from legal principles?

The answer to each of these questions is, in general, that it depends upon the way the Practice Court work is organized and conducted. There is danger of waste of time and effort in faculty conducted Moot Courts, as in student clubs for practice work in procedure, even when the student clubs really function. There is, no doubt, a special danger of rule of thumb work in the Practice Courts. But Practice Courts can, I think, be so organized and conducted that the student’s reasoning power will be stimulated and strengthened, quite as effectively as in the best courses in substantive law. With no very burdensome co-operation on the part of the law faculty, the work of the Practice Courts, it would seem, can be brought into such relation to the student substantive law courses as to give a keen and lasting edge to many of their important distinctions.

But there is another question deserving of attention here—two closely relat-
ed questions. Every law school worthy of the name owes a duty to its graduates individually. Every law school owes a duty to the profession. Has the school discharged its duty to its graduates if it turns them out so poorly equipped for the practical work of the courts that, like blind leaders of the blind, they and their clients will almost certainly fall into the ditch? However it may be in the millennium, the trial of a case is still, in some measure, a contest of technical skill between adverse parties. Now and then the law graduate can obtain this training in a law office; but these chances are rather limited and apparently are growing less. A great law teacher has suggested that the young law graduate, when in doubt as to the proper procedure, should consult the clerk of the court; but this seems hardly advisable outside of Utopia.

We live in a law school age. Bacon’s axiom has a wider range than it had three hundred years ago; we of to-day can well hold, not only every lawyer, but every law school, a debtor to the profession. One chief item in this debt is that of the duty to promote the efficient administration of justice. Do the law schools meet this duty adequately when they graduate students so poorly prepared for actual participation in the administration of justice that they cannot prepare or conduct a case properly, either in the trial court or on appeal? “We find no greater problem here,” remarked Judge Drury, of the Kentucky Court of Appeals, last February, “than the proper disposition of cases that have not been properly practiced in the trial courts and are poorly presented here.”

Through the delay which it causes, if in no other respects, this lack of training tends to the defeat of justice. Because of it, many of our American courtrooms might fittingly have above their portals the historic name, “The Hall of Wasted Hours.” Possibly this maxim, recently quoted with approval by Mr. Justice McReynolds, might be inscribed above the judges’ bench, in plain view of the barristers: “There is no debt with so much prejudice put off as that of justice.”

The inefficient administration of justice in American courts presents one of our greatest problems. Forward looking lawyers, with here and there an association of lawyers, have been preaching the importance of a reform movement. In July, 1913, the American Judicature Society was granted a charter by the state of Illinois for the one great purpose of promoting the efficient administration of justice. To that end, the Judicature Society has been seeking, through almost twelve years, “to co-ordinate the efforts of bar associations and individual lawyers throughout the country.”

But this debt of justice is owing from the law schools no less than from the active bench and bar. Perhaps the moral obligation resting on the law schools is even greater. Certainly they could be of very great assistance in the cause, if they would undertake it in its length and breadth, and on a broad scientific and constructive plan.

The reform will not come from men with will-o’-the-wisp minds advocating a vague, doctrinaire idealism in procedure. Neither can it be expected from law school graduates who enter the active profession with only a smattering of our procedural law as applied in the courts. It is easy for such a graduate to slip into the well-worn grooves. Because of his lack of scientific training in this field of the law, he often becomes the easy and helpless victim of the local form book. But may we not hope eventually to see a reform in theory and in fact, when the law schools have equipped the profession with a large body of graduates who have acquired in their law school course a scientific knowledge of our existing procedure as applied in the courts, of its ineffectiveness in the actual work of the courts, of the causes of this ineffectiveness, and of the practical nature of the remedies proposed.

Whether training of this character and

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1 Axton v. Vance (1925, Ky.) 269 S. W. 534, 538.
3 See the article by Mr. Herbert Harley in 62 Pennsylvania Law Review, No. 5, p. 340 (1914).
scope can be accomplished in the three-year curriculum is doubtful. We need a fourth year, which, in the State University Schools, it would seem, might well be organized as a research and legal clinic year, with a reasonably complete training for the efficient administration of justice as its chief objective.

A good deal in this line, however, can be accomplished in the three-year curriculum, even on a ten per cent. of subject credit. And perhaps some further details as to the work in the Indiana University School of Law may be of service here.

When the first-year student begins his Moot Court work, at the opening of his second semester, he has spent about twenty-five classroom hours on the course of the action at law, from its commencement until it reaches a court of error. With this he has been given, rather briefly, the corresponding features of the civil action of the Codes, and their statutory references. He has also had a good deal to do with the examination and discussion of common-law pleadings and distinctions, and their relation to the facts of a given controversy. In his Moot Court work he is trained in the drafting and testing, in arguments before the court, of pleadings under the fundamental principles and with special reference to given states of facts.

A good deal of time is spent in the actual framing and testing of the plaintiff's first pleading, as based on facts furnished by the professor in charge, and on the proper way to meet this first pleading. Whatever method he adopts is to be tested out by him in proper form, under the criticism of the professor in charge. For the sake of the contrast he is required in some cases to plead outalue civil cause, and then a criminal cause, both arising out of the same set of facts. The outcome here is carefully scrutinized by the instructor, and may be submitted by him to argument before a bench of three first-year students, whose seriatim opinions come under his criticism before the members of the court.

The work in Moot Court II, which runs through the second year, is conducted as nearly as may be on the line of actual cases in courts of first instance. Through the courtesy of the county commissioners, this court is held once a week, from seven till ten in the evening, in the well-equipped courtroom of the local circuit court. Through a rare piece of good fortune, the judge of the circuit court, an enthusiast in the cause, sits as chief justice, with associate justices from the members of the court. Some time in advance of the trial a mimeographed statement of the facts of some actual case as they may have come at the outset to the plaintiff's lawyer is given to every student member of the court.

At this stage the actual case is carefully kept under cover. Its facts are given in gross, material and immaterial, substantive and evidential, actual and fanciful. The ideal in this preliminary statement would match what Charles O'Connor once wrote the South Carolina lawyers was the common practice in New York in his day—"to tell your story as any old woman, in trouble for the first time, would narrate her grievances." With this mass of facts and fancies, every student is required, as plaintiff's attorney, to institute the suit in the proper form, with its appropriate pleading, and in strictest accord with the rules which govern in an actual court of first instance.

One feature in connection with this second year Moot Court work is the Clerk's Office Seminar. Fortunately, again, we have a former student of the law school as deputy clerk in the local court. He conducts the students, in small groups, through the clerk's office, and brings them into touch with everything in the progress of a case in his charge until the trial docket is framed.

In the third year Moot Court, which runs through the year, the work is based on actual cases in progress from a court of first instance to the Supreme Court. Lawyers who have been engaged in the actual cases come down, generally from Indianapolis, to supervise, as chief justices, the work of the court, with special reference to its preparation for an appeal, including the writing of briefs. In
the latter half of the third year, a judge of the Supreme Court comes down to sit as chief justice in the argument of these cases before the Appellate Division of the Practice Court.

Here again student members of the court sit as associate justices, and read and file written seriatim opinions, for whatever objections the judge of the Supreme Court chooses to make, and for his advice. At the close of the case the results which had been reached in the actual case, whether in the trial court or on appeal, are used to point a moral at any stage of the progress of the case in the Practice Court.

One difficulty in connection with this work is the lack as yet of a vade mecum book for the Moot Court students, in all these classes. Some books on trial practice approach it, but none as yet appear to meet it successfully. We need a book which will enable the Moot Court students to get, in a compact, simple, and analytical form, the course of proceedings in the fundamental things of a civil action, with precedents of how to plead and how not to plead.

It is rather surprising what an interesting collection of precedents of how not to plead are furnished in recent cases in the reports, as even a casual card index reveals. Perhaps this collection of cards, on precedents of how not to plead, furnishes an additional reason why the law schools should lend a hand in promoting the efficient administration of justice.

Classes in Court Practice and Procedure

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The Editor of this Review has kindly asked me to contribute a short article upon the subject of the course in court work in law schools, or what is commonly called Moot Court practice. In recent years the law magazines and interested organizations have published a voluminous literature discussing the modern methods of legal education, most of which has had for its theme the superiority of the new over the old plan of preparing men for the bar, advocating apparently the exclusive monopoly of such preparation by the law school, and the total abolition of the former method of apprenticeship in a law office, preliminary to a course of systematic study in the classroom under professional teachers.

If it were relevant to the purpose of this article, a good deal might be said in moderation of the extravagant claims of the protagonists of the law school method as the sole agency for making lawyers. The only reason for the law school at all is as a means to an end, namely, to fit students to become capable, successful, and eminent practitioners and jurists, qualified for the highest rank at the bar and on the bench, and it remains to be satisfactorily shown that the bench and bar of to-day, which are mainly the product of modern law schools, are distinguished for ability, skill, resourcefulness, eloquence, and fidelity to the responsibilities of the legal profession above a like number of practitioners and judges of fifty to seventy-five years ago, who came to the bar by the methods of preparation then in vogue.

There are more lawyers, even in proportion to population, than formerly, and there is a wider diffusion of theoretical information on legal subjects, a greater fluency in the exploitation of the academic and philosophical aspects of the law as a social agency, a keen and not always discreet concern for reforms and new classifications, and a modernistic