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service to the profession and the law through a comparative study of Restatements and local cases and statutes. Through the local review, and with the cooperation with the local bar associations, fine results may be accomplished. It seems pretty certain that this piece of work is going to be done by some one. I sincerely hope that it will not be made a commercial venture, but that the law schools, whose men are best fitted for it, will see that it is done and done well.

Law Schools and Legal Clinics

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[Address delivered at the Twenty-Fifth Annual Meeting of the Association of American Law Schools, December 31, 1927.]

In this year of grace, 1927, the fall registrations in 160 law schools, good, bad, and indifferent, aggregate about forty-five thousand. In the 62 law schools which are members of this Association, the registrations in the same period aggregate about sixteen thousand. Who, in the exercise of a fair judgment, shall separate the sheep from the goats in this crowd? Who, through broad and discriminating teaching, shall give to these students an adequate legal education for admission to the Bar?

The law offices are no longer able to do either of these things. This fact, indeed, has been clearly recognized by the active Bench and Bar. After the fullest consideration of the problem, their representatives have declared, in effect, that the high task of legal education for admission to the Bar should be the mission of the law schools—those which have the proper equipment and offer an adequate course of legal instruction.

This is one of the most significant results in the history of the American Bar. It is an outstanding characteristic in the possible system of American legal education. A word or two as to how it came to pass may be of value.

Several years ago, the Legal Education Section of the American Bar Association was considering whether there should be
an attempt to "strengthen the character and improve the efficiency" of persons seeking admission to the Bar. In the annual meeting of the Section in 1920, the following resolution, after some discussion, was offered by Mr. William Draper Lewis:

"The Chairman for the ensuing year and six other members of the section appointed by him shall be a special Committee, which Committee shall report at the next annual meeting of the section their recommendations in respect to what, if any, action should be taken by this Section and by the American Bar Association to create conditions which will tend to strengthen the character and improve the efficiency of persons to be admitted to the practice of law."

The resolution was adopted, and the special Committee, with Mr. Elihu Root as its head, was appointed by the Section, to report at its next meeting.

The Committee took hold of their task in a most thoroughgoing way. Calling a meeting in New York City, they sought information and advice from active practitioners far and wide, from teachers in markedly different law schools, from all sources of value. They went in quest of the best that was known and thought in the matter. Then they took time for a careful consideration of all that they had thus gathered, and from it framed their report for the next annual meeting of the Section.

This meeting and that of the American Bar Association were held in Cincinnati. There was an unusually large attendance. It was, in a notable degree, a representative gathering, both in the Section and in the Association, of the active Bench and Bar.

Those of us who were present at a preliminary meeting of the Section will recall the uncertainty in the minds of some as to what action would be taken in the general meeting of the Section or in the general meeting of the American Bar Association. Would the two years of college requirement block the way? Would the legal education of those seeking admission to the bar be fully recognized as the province of the law schools? Would the traditional method of law office teaching be recommended, in part, at least, as sufficient?

The special committee presented this recommendation:

That the following resolutions be offered at the pending meeting of the American Bar Association:

"The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

"(a) It shall require as a condition of admission at least two years of study in a college.

"(b) It shall require those students to pursue a course of three years' duration if they devote substantially all of their working time to their studies and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies."

In this, there was, strikingly enough, nothing said about law office teaching, either in substantive law or in procedure. The requirement for admission to the bar, as respects legal education, looked only to the three-year law schools. There was a long and earnest discussion in the general meeting of the section on whether the recommendations should be adopted. Opposition was offered. But the resolution passed by an overwhelming majority.

On the next day this Recommendation from the Section was reported to the general meeting of the American Bar Association. Some five hundred members were present, from all parts of the United States. There were doubts expressed. There was outspoken opposition to the adoption of the proposed resolution. But there was a long, full, and earnest discussion, with the freest opportunity for the expression of opposing arguments or doubts. On a standing vote of those in favor of the adoption of the resolution, followed by a standing vote of those opposing, it was evident that the resolution was adopted by an immense majority.

For a further test of the views and sentiments of the active profession on the change proposed, a Special Conference of Bar Association Delegates was held on
February 23 and 24, 1922, in Washington City, to consider the fundamental questions underlying the resolution. It was a strikingly representative gathering of lawyers in active practice in the different states of the Union. One hundred and forty-six state, county, and city bar associations, in forty-five states, had sent representatives. The delegates reporting from these associations numbered 292. The delegates from the American Bar Association numbered 5. Few, if any, of the 297 delegates were engaged in law school teaching.

The resolution adopted by the American Bar Association was presented with great fulness and with reference to its most important bearings. The keynote was struck by Mr. Elihu Root in his concluding remarks:

“What,” asked Mr. Root, “is the vital consideration underlying all the efforts of the American Bar? We are commissioned by the state to render a service. What we have been talking about is the way of ascertaining or of producing competency to render that service. * * * The standard of public service is the standard of the Bar, if the Bar is to live; the maintenance of justice, the rendering of justice to rich and poor alike; prompt, inexpensive, efficient justice.”

The Conference of Delegates adopted nine resolutions. The second repeats the resolution of the American Bar Association requiring that every candidate for admission to the Bar give evidence of graduation from a law school requiring at least two years of study in a college and three years of full time law study. None of these nine resolutions requires or suggests that the law student’s course in procedure should be in a law office, as either supplementing his law school course or otherwise. And it may be worth while to remember that these resolutions were approved by lawyers of whom many had never studied in a law school. Thus, a leader of the West Virginia Bar, the venerable George E. Price, who had never studied in a law school and had been admitted to the Bar fifty years before, says to the Delegates: “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.” But he adds as applying to our own day: “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.”

And Judge Goodman, speaking out of his experience on the Bench, told about the sacrifice of the clients’ interests, the increase, in expense, the continual delays, the sending back of cases for new trial, notwithstanding their merits, because of the inefficiency and incompetency of members of the Bar.

These resolutions were adopted less than seven years ago. It is still too early to speak definitely of the probable final result in our system of legal education. But in the light of the express terms of the resolutions, of the discussions leading up to their adoption, of the fine purpose shown by the active bar in these discussions, does it appear that any essentials of legal education for admission to the practice of the law lie outside the proper mission of the law schools in this Association? Is there any sound reason why the law schools in this Association should decline to accept in full their mission from the law offices? Is there anything which really prevents our law school faculties, especially in this Association, from rendering the greatly needed service to the cause of substantial justice, and all without neglect of the teaching of the fundamentals of substantive law?

Undoubtedly the problem of legal education in the law schools has some very different angles. It is sometimes assumed that the question is chiefly whether the law schools should teach the rule of thumb practice in the local jurisdiction. But even in the local jurisdiction there are broader principles than those of the rule of thumb. Should the law schools, even if they do not go beyond these broader principles of the local jurisdiction, at least give to the students a training in them?

But outside the broader principles of the local jurisdiction lie the fundamental principles of our Anglo-American civil procedure. The law offices, even if it be
admitted that they can teach the principles of the local jurisdiction in procedure, cannot give any thorough training in the broader principles which underlie our civil procedure in this country and in England. Why should not the law schools undertake this? In the twenty-eight code states of the Union, in England, in various British provinces, we have had, since 1848, in America, and since 1873-75 in England, a developing system of civil procedure under the principle of one form of action. Must we let this go as something which the law offices cannot teach and which the law schools will not teach in any thoroughgoing fashion?

There is upon the threshold, apparently, a great opportunity for the improvement of our civil procedure under the principle of the one form of action. The Uniformity of Procedure bill which has been under consideration in Congress for many years stands an unusually good chance of passing in the present session of Congress. If it passes, the Supreme Court of the United States will be authorized to appoint a Commission to prepare a code of rules for a simple, scientific, efficient system of civil procedure under the one form of action for both legal and equitable causes. If adopted by Congress, this system will go into force in all the federal courts in all the states of the Union. Why should it not be followed by the adoption of practically the same system for all of our state courts of record, at least in our twenty-eight code jurisdictions? Why should it be necessary in the administration of the law to change the carburetor of the automobile of justice whenever it crosses a state line or even when it takes a civil cause of action from a state court into a federal court within the same state? Why should our administration of justice be based upon a mediæval sentiment?

But is there any hope of this reform until the members of the active Bar have received a training in the fundamentals of our civil procedure as developed under the one form of action in America and in England?

This kind of training evidently cannot be given in the modern moot court. Neither can it be given in a series of lectures. But is it not possible to give it, and along with it a training in the fundamentals of the local jurisdictions, through an organized legal clinic?

I can only suggest briefly what some of the features, as it seems to me, of this legal clinic should be. Evidently it is not to be a moot court, not even an expanded moot court. It is not to be a mere copying of the legal papers from the court files, nor even a discussion in class of faults and defects in these legal papers. That is a most interesting thing, but there is something better. Would it not be possible to have the legal clinic organized under a director of legal study whose business it should be to see that every man taking the course should be placed in a real law office, preferably in a city of considerable size, perhaps best of all in a large city in which the capital of the state and the Supreme Court are found? The student thus placed would be under the continual observation of the director of legal studies and under the guidance (it wouldn’t count for very much) of the men in the real law offices. It should be his business to see how things are done in an office conducted as a law office ought to be in the handling of actual cases. Then, still under the eye of the director of legal studies, he should sit in with cases going through the courts, the courts of first instance, in the state courts and in the federal courts, the appellate court, the Supreme Court of the state, watching how those cases are presented, how argued, and how decided.

In addition, it would seem to me that it would be useful if this director of legal studies were to meet his class of students together, say three times a week in the evening, for a frank and full discussion of the problems as they have met them, for a criticism of the procedures by the director of legal studies.

Why should it not be possible, also, in connection with this work, to have a research course on modern civil procedure in America and in England, conducted by members of the class and still under the criticism of the director of legal studies? Might it not be possible then to overcome some of the objections which the active
bench and bar are now making to the way the students of leading law schools admitted to the bar are fumbling in the trial of cases? The common pleas courts, for instance, of Cincinnati are complaining now about the way that law graduates are interfering with the administration of justice in the way they handle their cases in the trial courts. I know of lawyers who declare that the graduates of some of the best law schools show themselves utterly unable to handle a case even in its rudimentary features in the courts. Why cannot that be overcome? Why can we not meet in the law schools this mission which the active Bench and Bar have in very striking fashion and after a very full consideration of the question said is for the law schools, and not for the law offices?

Meeting of the Association of American Law Schools—1927

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