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Maintenance of Professional Status

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MAINTENANCE OF PROFESSIONAL STATUS

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The most difficult of the "Post War Problems of the Legal Profession" will be to maintain its status as a profession. Dean Pound said recently: "Historically, there are three ideas involved in a profession, organization, learning, and a spirit of public service. These are essential. The remaining idea, that of gaining a livelihood is incidental."[1] In Indiana organization has not been realized, learning only since 1931 has been a prerequisite to admission to the bar, and not a few lawyers have been too preoccupied with gaining a livelihood to spend much time in unselfish public service. Many have demonstrated their public spirit but the bar, as an entity, is not entitled to credit for their achievements.

Half a century ago there was a compact group of lawyers in each county. Their activities centered in the court house. Except in the larger cities their clients were principally farmers and shop keepers. If there were industrial plants they were usually home owned. Valuation sometimes was a tax problem but it was finally determined by local county officials. There was neither income nor inheritance tax. Proprietors of factories had grown up with their employees, worked with them, went to the same churches and their children to the same schools. Labor relations were individual not collective. The law of torts governed controversies arising from injury of employees. The railroads crossed county and state lines, taking their lawyers into other communities, but otherwise changes of venue in important law suits were the principal occasions for a lawyer's leaving his own county. Between terms of court they prepared pleadings and interviewed witnesses for the cases to be tried and wrote briefs for those appealed. Litigation was their big business. Called to court every morning by the court house bell, they worked, visited, played together and achieved a unity that required none of the formalities of organization.

With the industrial age came in Indiana first the Railroad Commission, later enlarged to regulate all public utilities,

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1. Pound, "What is a Profession: The Rise of the Legal Profession in Antiquity," 19 N. D. Lawy. 203 (1944).

then the Industrial Board followed by many other state administrative agencies. Came also insurance for every kind of casualty, concentration of business financing and management in the large cities, federal regulation and now federal control by innumerable agencies whose processes reach down into every home. The local bars have retained the criminal, divorce and probate business, but the law of corporations, insurance, taxation, labor relations, mortgages, banking and kindred subjects is in large measure administered either from city law offices with more clerks than partners or by the salaried law trained employes of the government and of huge private corporations. Litigation is no longer the chief occupation of the members of the bar. Many a lawyer never attends a court. With this dispersal of its members the bar has lost the cohesive natural association of an earlier day, and, if organization is one of the three essentials of a profession, must resort to artificial and inclusive means to maintain its professional status.

Learning should keep pace with changing conditions. Too many of the older lawyers have failed to adapt themselves or their office personnel and equipment to the extraordinary development of administrative law. As a result the practice before boards and commissions has been turned over to specialists in the large cities or has been assumed by lay agencies such as accounting and tax firms and insurance companies hiring law trained employees and referring only the difficult legal problems to independent counsel. Administrative law is no passing fad. Some of its inadequacies and evils must be cured. Growing danger of government by bureaucracy is already recognized. More adequate redress for administrative miscarriages of justice may be found in closer supervision by courts. But the administrative method is here to stay. The law schools are attempting to educate their students to meet these changing problems but their graduates, so prepared, find few opportunities in the smaller county seats and not enough with established law firms in the large cities. To the extent that we let these bright young men and women, for lack of a present living, slip out of the practice of law into salaried jobs we not only curtail their independence but add to the burden of maintaining our own.

If after the war there is a continuance of a present noticeable movement to decentralize industry we shall find in

our smaller cities and their environs many industrial plants with employees living outside the city limits on small tracts intensively cultivated after factory hours or in off-seasons. Many of these plants will be independently owned. Management and labor, and their families, will have legal problems, old and new, many involving specialized branches of the law.

Legal learning is of no value without application to the factual situations presented by consulting clients. Much of the substantive law is now found in federal statutes and not a little in regulations of boards and commissions. The adjective methods of administering this law are confusing, even baffling, to a generation of lawyers trained in court procedure.

The country store, the country doctor and the country lawyer well served their day and generation. Today the super-market has moved to the buyers in the residential district, clinics and county hospitals are replacing the general practitioner. The law is not nor can the legal profession afford to be static. Fundamental principles abide but must in new ways be applied to changing economic, social and political conditions. If the old lawyers will not or can not adapt themselves to the new ways, they should in the interests of their communities and their profession bring into their offices the younger generation who are prepared and eager to tackle these new problems. Why should there not be in every city of ten thousand people several law offices comparable to the medical clinic? Or why not make it worth while by mutual confidence for legal specialists to locate in these communities and as lawyers' lawyers handle locally the business which clients would gladly entrust to home lawyers known to be competent? By local cooperation, even before all inclusive organization, strong bars can be rebuilt to serve the growing needs of growing communities.

If lawyers are able to solve their problems of organization and applied learning, the third essential of a profession will take care of itself. Every year, until the war depleted the law schools, a new crop of graduates has been infiltrating the profession. With few exceptions they have a keen sense of legal ethics. Many are following the careers of their fathers in the face of knowledge that financial wealth will not be their reward. Their education has necessarily acquainted them with outstanding personalities and traditions of the profession. They would rather establish themselves in pri-

vate practice than to lose their identity as employees of super-business or super-government. Here is splendid material for rebuilding a profession.

Dean Pound might have added that historically the legal profession was independent. Its spirit of independence contributed to the winning of the liberties to preserve which we say this war is being fought. Mussolini in his heyday by edict made all lawyers servants of the fascist state. If there still are courts and lawyers in Germany they are puppets of Nazism. Why all this "blood, sweat and tears" if after the war, for lack of a united, learned, public spirited and independent bar to furnish the leadership in government by law, we surrender our liberties to a totalitarian government of our own making?