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POST WAR PROBLEMS OF LEGAL EDUCATION

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The post-war problems of legal education are substantially the pre-war problems of legal education complicated by the difficulties which a post-war boom will create. In the main the problems are four: (1) what to require for admission to law school, and (2) for graduation; (3) what to teach, and (4) how to teach it.

I.

In point of time the first problem of consequence will be in connection with the war credit to be allowed by the schools in satisfaction of pre-law requirements, and indeed the problem is now an immediate one because of the return to school of discharged veterans. There will be considerable pressure designed to lower the minimum admission requirements in favor of returning veterans. The situation is not without its dangers for the very simple reason that military experience, or any other practical experience, is not of itself a substitute for knowledge, or mental discipline and development, or a fair proficiency in the skills of oral and written expression.

The Council of Legal Education of the American Bar Association has already taken action on this matter in tentative form. In general the proposal is that veterans will be allowed a maximum of eight semester hours of credit for military service as such; they will be allowed any college credit actually earned in an Army or Navy training program in the colleges; they will be allowed any credit which can be established as the result of the evaluation of Army and Navy technical courses given by the armed services themselves or other educational work or intellectual development established on the basis of examinations on the subject. The proposal is certainly sound as it will authorize the schools to disregard formal standards and requirements but at the same time will furnish a means of establishing pre-law credit on a meritorious and substantive basis. If the proposal is finally adopted and adhered to it would seem that a sound solution of this problem will be reached.

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Those schools which require three or four years of college work for admission rather than the minimum of two years will of course be confronted with the problem as to the modification of those requirements either in general or in particular cases. Those schools necessarily must defend their standards on a substantive basis, that is, that three or four years of college work is a necessary or reasonable pre-law requirement. If this were true two years ago it should be true two years in the future. At least the fact of military service of itself would constitute an arbitrary distinction. In view of the fact that under the proposal mentioned above a veteran may acquire pre-law credit to the full extent of his intellectual growth regardless of formal standards it would seem that any general modification of a three or four year admission requirement would not be justified. On the other hand those schools must be willing to look at individual cases on the merits and waive their own admission requirements which go beyond the minimum required in the event a man's age and length of service indicate that additional pre-law work should not be required of him. In part the three or four year requirement is based upon the item of maturity, and that factor may very well be given considerable importance in passing upon a student's preparation for the study of law.

No one, as far as I know, has suggested that the three and four year (in the evening schools) requirements for graduation from law school be modified, and presumably those standards will not be changed. Preparation for the study of law is as important as the study of law itself. The two are inseparable. Veterans who return to law school will be lawyers for a long time and despite the popular pressures to reward them any gift which subtracts from their necessary preparation for a professional career will constitute an injury and not a benefit. As Abe Martin said, "The only time I got something for nothing was the time I bought a suit for my son-in-law." The greatest disservice any school, or the public, can do a student is to give him something for nothing.

II.

Most of the difficulties which will confront the law schools in the post-war period will arise out of the abnormal enrollment and many irregularities which will result as soon

as demobilization develops on any large scale. It is of course impossible to predict the exact numbers which will be involved because one does not know the basis upon which demobilization will proceed, the extent and effect of the federal educational program for veterans, or the appeal which professional training and a professional career may have to veterans who will have served for a considerable length of time. As a matter of planning, however, law schools should anticipate that practically all of the men who left law school before graduation will return. For the past two years the entering classes in the law schools have been well below normal and a very substantial number of men in the military service have prepared themselves for admission to the law schools. On the basis of those considerations and the experience after the first World War it seems to be a safe prediction that enrollment in most schools will be double the 1938 or 1939 figures.

A number of the students will be irregular because they left law school in the middle of a year and likely will not return at a corresponding time. In any event veterans will wish to go back to school as soon as possible so that courses will have to be offered in the first year work at least three or four times a year. It is clear also that almost without exception returning veterans will wish to go to school twelve months out of the year in order to take full advantage of the federal educational program and to make up for the time which they have lost.

It will be necessary for the law schools to provide "refresher" work for returning veterans. In general three types of persons will be involved: (1) students who left law school before graduation; (2) men who entered military service immediately upon graduation; (3) men who practiced for some time before entering the service. Indications are that many men in the service are keenly interested in "refresher" courses. It is doubtful, however, if the actual demand will equal the present interest for the reason that discharged veterans will certainly be tempted to accept a position immediately open to them in preference to work of this character and as against the uncertainty of a later employment or location.

It seems that "refresher" work for returning students will not be developed to any considerable extent. Men in this

category undoubtedly will pass through a period of readjustment, but cram review courses will not be of any real value to them. A review of their previous work will be essential but it can best be done by the men themselves with some small amount of supervision and assistance.

The other two groups do not appear to present substantially different problems. Some undoubtedly will wish to take additional law school work on a graduate level in order to prepare themselves for some specialized field of practice. Schools now giving a graduate program will probably be unable to take care of the demand with the result that some additional schools will be required to develop work in this field. As in the case of the returning students cram review courses will have little appeal and would accomplish little. For these groups the most feasible program appears to be one designed to acquaint the men with the recent developments in the law and particularly in the public law field and by the offering of short courses in those fields which were not available to the men when they were students in law school. Apparently most men will not be interested in a program for a longer period of time than three to six months. All law schools are giving serious consideration to this problem and undoubtedly will be prepared to offer an attractive program in this field.

All of the above factors will create a serious problem in the field of faculty personnel. There will have been some vacancies because of retirement and because of the failure of some faculty men on leave to return to the teaching profession. Few replacements have been trained during the war period. It seems clear that it will be difficult for the schools to maintain an adequate and competent staff to take care of the "refresher" courses, the large numbers involved and the necessary increased offering of courses to take care of the irregular students. Undoubtedly for a two or three year period the law school faculties will be required to devote more than the normal amount of time to classroom instruction.

So far as I have been able to observe there is no law school faculty member who does not appreciate the demands which will be made upon him in the post-war period or who does not cheerfully face the responsibilities which the program will present. The personnel problem may not turn out to be as difficult as anticipated because among other things

it may develop that qualified men returning from the service without teaching experience will be quite anxious to participate in the post-war educational program. This will depend in part on the difficulties which may develop for a man wishing to re-enter the practice. In any event meeting the needs of an abnormally large number of law school students on an irregular basis presents a problem which although difficult certainly can be solved. The solution will require an acceptance of the proposition that the teacher's first concern is with the development and instruction of his students and a realistic acceptance of the fact that an unusual situation requires at least a temporary abandonment of traditional scheduling and the arrangement of courses.

III.

The perennial problems of what to teach and how to teach it will be complicated by all of those same factors. Obviously the post-war situation will not lend itself to many radical changes in curriculum or teaching methods because there will be little time for the development of new teaching materials or for experimenting with radically new teaching methods. This does not mean that the existing methods cannot be modified in order to achieve a change in emphasis or objectives. Nor does it mean that there cannot be a realistic reorganization of the law school curriculum in the light of a shift in the values to be ascribed to some of the traditional courses. It is undoubtedly true that many of the courses in the public law field such, for example, as Taxation, Administrative Law, Trade Regulation and Labor Law have become the "bread and butter" courses in preference to some of the older courses in the private law field. It would seem that any school which does not, even at this time, take some cognizance of the growing importance of some of the fields of law will not prepare its graduates for the practice of law in the post-war period.

Similarly there has been a growing conviction in the field of teaching methods that a shift of emphasis can well be made in the instructional work in the latter half of a student's law school curriculum. There is no reason why at the present time and in the post-war period some modification of the traditional program cannot and should not be made. In general law school objectives have been three-fold;

first, to train its students in the common law discipline as such. The case method of instruction is unquestionably an admirable tool to that end. But much is to be said for the proposition that this feature of law school work can be reasonably well accomplished in the first year or at least in the first three semesters of a student's career. The second objective is the acquisition of legal knowledge in as broad and deep a field as is possible within the time allowed, and the third is the acquisition of the practical skills of a lawyer. Much is to be said for the proposition that in the second field the case method of instruction is wasteful of time and energy and that therefore in the second half of a law student's career recognition may well be given to the fact that the student is primarily engaged in acquiring additional legal information.

Skillful and sympathetic teaching in the first year constitutes the heart of a law school student's career. A considerable burden is upon the teacher. In the last two years most of the burden should be on the student.

It would be contrary to human nature if law school teachers did not possess some tendency to over-emphasize the teaching function. But it is still true that most education is self-education and that learning is most effectively acquired and retained as a result of a student's own ambition and initiative. It would certainly seem, therefore, that any modification of teaching methods which places upon the student most of the burden of learning is a very desirable improvement.

Such a change may be related directly to the acquisition of lawyers' skills as such. In the past law schools have concentrated on the acquisition of legal information and the analysis and logical criticism of cases. There has been constant complaint on the part of some that the practical aspects of legal education have been neglected. In general the prevailing practice and decision can be defended for certainly nothing is more "practical" for a young lawyer than a real mastery of the rules of law, and the common law and legislative processes.

However, the proposition cannot be defended that the acquisition of practical skills is unimportant. The problem has always been one as to time, the schools taking the position that the three years allowed for legal education did not

permit any considerable amount of work in this field. The matter has, therefore, been left to the hard school of experience or the tutoring of practicing attorneys. In a few states the latter has been required in the form of clerkship.

It is suggested that a fair solution of the problem will result if the law schools spend a fair amount of time on the office skills. Much could be accomplished in this field if during the second and third years the students are assigned problems submitted by practicing attorneys and required to work out a solution of the problems and to prepare the necessary legal documents involved. If the problems are selected from those fields in which formal course instruction is not given such a program would also serve as a means of broadening the student's knowledge. A program of this character has been put in operation at Columbia University and indications are that it can be developed as a very effective part of the law school curriculum.

The other aspects of a lawyer's practical training can probably at this time still be best insured by a required clerkship before admission to the bar. Undoubtedly the law schools can contribute something to such a program both in the formulation of the course of instruction to be required and in the administration of the program.

One additional suggestion is made. So far legal education has made no use of visual aids. It seems clear that some considerable use of this technic should be and can be developed, designed primarily as a means of acquainting the student with the actual practice of law.