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MODERN TENDENCIES IN PREPARATION FOR THE BAR

When Professor Langdell inaugurated the case system of study in 1871 at the Harvard Law School, he revolutionized the methods of law teaching. His statement in the preface to his first case book on contracts that—

Law considered as a science consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainly to the ever-tangled skein of human affairs is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law.

still remains as a lode-stone to guide the intending candidate for a lawyer's license. This means, if it means anything, that a student is not to be crammed with raw information, but that he is to be given a course which will develop in him effective knowledge.

But while this truth still marches on, methods of effectuating the desired result are changing. The case system is being subjected to some criticism as not being ideal for use during the entire three years of law study. Furthermore, the functional aspects of the law are being emphasized, and its relation to the social sciences is receiving much more consideration by the law schools than it ever has before. More specialized courses and research work of various kinds are being made part of the curriculum in some law schools. At the University of Minnesota and at Northwestern University four-year courses are now given in the law school. Legal aid clinics which have proven their usefulness and practicability, where the students actually handle the work themselves, have been established at the law schools of Northwestern University, University of Cincinnati, University of Southern California, and Harvard, and are being tried out in more than half a dozen other schools. Organizations such as the student Bar Association at Duke University have been formed to develop professional spirit among the law students, and the society of Law Alumni of the University of Pennsylvania has proved itself invaluable to the profession by undertaking the task of providing sponsors for law students in that state.

But change has not been confined to methods of teaching and alteration of curriculum in law schools. Many of the old ideas in reference to the most efficient kind of training for practice at the bar have radically changed since the beginning of this century. If we go back to 1890 we find there were only 4,400 students in law schools. Undoubtedly the number who were studying law in offices at that time were considerably greater. Today the number of law school students is about ten times that many, while the number of law office students has dwindled to an almost negligible three or four per cent. The reason for this is obvious. While formerly a student in a law office got actual instruction and help from the practitioner with whom he worked and learned while he wrote out contracts and deeds at his senior's direction, today he is a mere cog in the wheel and if he has not some knowledge of law he becomes more of a hindrance than a help. The apprentice system is gone, and with it we have lost some of the great benefits to be derived from the association by a young man with a practitioner of standing. But in this place we have institutions equipped with experts in teaching, specialists in the practical phases of law in which they instruct, and we have students who come with a background of general education, prepared to give such time as is necessary to master the profession they intend to enter.

Although there have been many changes over the last few decades, as early as 1881 a resolution was passed by the American Bar Association on the recommendation of its Committee on Legal Education and Admission to the Bar, recommending a three years' course in law schools.¹ In 1897 the additional prerequisite of a high school education before law training was added.² It was only in the last decade, however, that any very considerable attention was given to the requirements for admission to the bar. In 1921 a committee under the chairmanship of Hon. Elihu Root recommended and secured the adoption by the American Bar Association of standards of legal education providing for two years of prelegal college education or its equivalent before the study of law, and graduation from an approved school having a three year law course if the students gave all of their time to its study, or a four year course if the school was on a part time basis. At the time this resolution was adopted no state required more than a high school education

¹ Vol. IV, Reports of the American Bar Association (1881), p. 28.

² Vol. XX, Reports of the American Bar Association (1897), pp. 31, 33.

for admission to the bar, but today there are nineteen states where either presently or prospectively the requirement is that the applicant for the bar must have at least two years of college work or its equivalent in addition to law training.³

Opponents of this program of the American Bar Association struggled against it unceasingly but without avail, and at the annual meeting of that body in Memphis in 1929, it was reaffirmed with overwhelming emphasis. Progress in the adoption of these standards, while not spectacular, has been steady, and in many states where these recommendations of general education or legal training have not been passed by the legislature or incorporated into the rules of the courts of last resort, the state bar associations have gone on record as favoring them.⁴

Various arguments have been advanced pointing to the desirability of not making it too difficult to acquire a license to practice law. It is said that the door of opportunity must be left open and the poor boy as well as the rich boy must be given a chance to enter the legal profession. The examples of Abraham Lincoln, of John Marshall and of Grover Cleveland have often been given, and when Silas Strawn was president of the Bar Association and was carrying on a very aggressive campaign to advance the qualifications for admission, he was pointed to as a shining example of what could be accomplished by a man without a college education. I do not think it is necessary to dwell on these arguments at any great length, as they have been repeatedly discussed before. At the time of Lincoln, and Marshall, and even in Grover Cleveland's time, a college education was a very difficult thing to acquire. It was then, in truth, the luxury of the rich. But even since 1890, the enrollment in our colleges and universities has increased over fivefold, while the population has only doubled, and today it is estimated by one of the high officials of the Bureau of Education of the government that in the colleges and universities of this country as a whole one-fifth of the men and one-tenth of the women are

³ Colorado, Connecticut, Delaware, Idaho, Illinois, Kansas, Michigan, Minnesota, Montana, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin and Wyoming.

⁴ Arizona, California, Florida, Georgia, Iowa, Louisiana, Missouri, Nebraska, Nevada, North Carolina, South Carolina, South Dakota, Utah, and Virginia.

entirely self-supporting, while one-half of the men and one-fourth of the women are contributing to their support by working part of the time.⁵ There seems to be no question that a man of ambition today can secure a college education whether his family can afford to pay his way or not. The opportunities are so vastly greater in this direction than they were forty or fifty years ago that a comparison is entirely beside the point.

But the argument misses the mark for another reason. It is true even today that there are many exceptional men who could study law in their own homes without ever having attended college at all and pass a creditable bar examination and become leading members of the bar. These are the men with the ambition, the purpose and the drive to succeed. But they are not the ones whom the profession is seeking to keep out of the bar, and it is also true that they will not be kept out by restrictions requiring a college education or a definite direction as to how law study shall be pursued. They are the kind of men who surmount obstacles and who achieve their ultimate aim. But the object of the standards above referred to is to bar out men of inferior mental capacity and those whose ethical standards may be open to question. They are what might be called the lower fringe; they are willing to become lawyers if they can do it without great sacrifice. They can perhaps acquire enough legal knowledge by their own study and by cramming to pass the bar examination, and yet some of them at least will never be properly qualified lawyers. It is against them that the public must be protected.

Are we going to say that because we have the example of one or a dozen brilliant men who have reached the heights of the profession although they knew very little law when they were admitted to practice, that, therefore, this should be the rule for everyone? Remember that our object should be to make every licensed attorney a person fit to advise a client on the law in important matters and capable of resisting temptations that may be put in the way of anyone who handles important matters. Rules for admission to the bar cannot be based on the accomplishments of the most highly gifted in a class; rather they must be designed to keep out the lowest group in a class, as they are the ones who will damage the public profession.

⁵ Greenleaf, Walter J., *Self-Help for College Students*, pp. 58, 64.

Bar examinations by themselves are far from an infallible test of legal knowledge. In New York, for example, it is said that the students who take a certain cram course increases their chances of passing the bar examination by ten per cent. Is it possible to argue that this six weeks of preparation really adds ten per cent to their knowledge of the law? But nevertheless bar examinations if combined with adequate qualifications of preliminary education and legal training form the best measure which we are able to make of young men who want to be lawyers.

With the bar becoming daily more overcrowded the necessity for such qualifications is becoming continually more apparent. In the last issue of "Notes on Legal Education," published by the Council of the American Bar Association on Legal Education and Admission to the Bar, this subject is dealt with in the following language:

"Chief Judge Benjamin N. Cardozo of the New York Court of Appeals, whose recent appointment to the Supreme Court of the United States won the enthusiastic approbation of the legal profession, in an address delivered at the dedication of the new building of the New York County Lawyers' Association on May 26, 1930,⁶ brought out the contrast between the overcrowded condition of the bar of today and the situation two hundred years ago, in the following words:

"In 1695 there were only forty-one lawyers in New York, and litigants with money used to retain the whole bar of the locality, leaving no one for their adversaries. Accordingly, in the same year an act was adopted by the assembly of the Province to regulate the number of lawyers that any litigant might retain, just as laws were enacted to regulate the enjoyment of other luxuries of life. The number was fixed at two. "If they retain any more," said the statute, "it shall be lawful for the justices of the Bench where the suit is pending to order all such attorneys as shall be retained, more than two as aforesaid, to plead for the other side, without returning the fee received, anything contained in this or any other act to the contrary thereof in any wise notwithstanding." There was poetic justice for you! Lawyer number 3 or lawyer number 4, retained and paid by an enthusiastic plaintiff, might turn up on the day of the trial, the money in his pocket, espousing the cause of the defendant. What would our Grievance Committee have to say about such practice today? I must admit that in my judgment it would have been fairer, if every client was limited to two lawyers, to provide that every lawyer should be furnished with two clients. Very likely such a guaranty is a blessing too great to be attainable in any earthly commonwealth. At any rate the lawyers seem to have worried along without it. I wish the draftsmen of that act of 1695 could have look at us today."

⁶ Contained in the collection of essays and addresses of Judge Cardozo published under the title "Law and Literature."

"If they could look at us today, they would see a national bar of approximately one hundred and sixty thousand lawyers,—with forty thousand more students in law schools on their way to join the ranks,—almost universally acknowledging that their profession is overcrowded, and yet continuing to admit between nine and ten thousand new licenses every year. They would see bar associations passing resolutions favoring higher standards (fourteen state bar associations in states not having a two year college requirement have approved the American Bar Association standards) yet courts hesitant about adopting them for fear of offending the great god Demos, and legislatures still contending for the 'open door' to the bar. They would see bar examiners, who as a class are closer to the problem than anyone else, and thus have a better realization of the true situation, raising their barrier year by year and turning back over half of the candidates at every examination in a vain effort to erect a dam against the flood of unqualified applicants.

"There are four agencies which can exercise some measure of control over this situation: the law schools, the courts, the legislatures and the bar examiners. The law schools are the agency through which ninety-five per cent of the candidates for the bar pass. If their standards were so strict as to exclude all the unfit—and this should be done as early as possible in the law school course—they could solve the problem. But there is no organization including all the law schools through which they can act as a unit. Any tightening of standards on the part of the best schools inevitably drives many of the poorer students into the poorer schools, but does not improve the quality of the total body of candidates or reduce their numbers.

"Many schools which have a preponderance of part time teachers on their faculties lag behind in their entrance requirements, in their equipment and in the quality of work demanded from their students, although in a great many cases these part time teachers are among the most influential practicing lawyers and judges in the community. The fact is that they often teach because they regard it as a duty they owe to the profession, and because of the real inspiration and enjoyment they get from contact with young men. But while in one way they are doing a duty to the bar, in another they are neglecting their duty when they do not insist that the school in which they teach maintain proper standards for admission of students, and respectable standards of scholarship after they have been admitted.

"The second agency is the courts, and the record shows that where they have laid down rules of admission, standards of general education and legal training are higher than where the legislature has undertaken to fix them. The courts are generally conservative but mainly they are held back by the fear that if they try to advance too rapidly, the legislature will undo not only their latest step, but also much of the progress which has been previously made. These fears are perhaps in some cases well founded, but where higher standards have the whole hearted backing of the bar, the court can count upon their support and is fully justified in placing upon the lawyers themselves the burden of defending any increase of qualifications which the court lays down. In other words, the court with the bar behind it should lead the public rather than wait to follow it.

"The third agency, the legislature, generally has the Jacksonian idea that the practice of law should be open to everyone who aspires to it. It looks on an increase of lawyers as merely tending to augment the supply, thus bringing about the wholly desirable result of lowering the cost of legal services. It ignores the fact that incompetents do the public much more harm than the benefits it could hope to derive through decreased costs, both by the giving of bungling advice and inadequate service, and through the lowering of the moral standards of the marginal lawyer which is the regrettable yet almost inevitable accompaniment of greatly increased competition in the legal profession.

"The fourth agency referred to is the Board of Bar Examiners. Timid courts have said to their Boards, "You take the burden. Raise the standards of your examinations and restrict the numbers admitted. We will support you in it." The bar examiners have responded nobly, not because they believed that their examinations could alone be an infallible test of fitness to practice law, but because they saw with their own eyes that many men were being admitted to practice who could never be competent lawyers. Even this barrier the persistent candidate can often overcome, particularly in jurisdictions where there is no rule prohibiting an indefinite number of re-examinations for the man who fails.

"Strict examinations alone will not accomplish the desired ends. Nor will high qualifications for admission do so by themselves. The American Bar Association saw this when it adopted the standards which Elihu Root's committee set up in 1921—first, two years of college education or its equivalent; second, completion of a three year course in an approved law school, if full-time, or a four year course in an approved part time school; and third, passage of the bar examinations.

"A great deal of progress has been made during the last ten years, but much still remains to be done, and it is only by working through the law schools, courts, legislatures and examiners, that the desired ends can be obtained. Three of these four agencies are component parts of the legal profession, and the fourth is made up largely from its members. Until the bar makes use of them to improve present conditions, it will deserve at least some of the things which are being said about it. Senator George Wharton Pepper, in a brilliant address before the recent annual dinner of the New York State Bar Association, referred to this in the following language:

"If we lawyers judge ourselves we are apt to betray a foible for self-appreciation. Perhaps this is a mistake that our banking friends made until they were startled by seeing themselves mirrored in the glassy surface of their frozen assets. It is better, therefore, to step off a few paces—say, to a nearby magazine stand—and look at ourselves through the eyes of one of our numerous critics. If we do this we shall see that as a class we are 'self-sufficient, self-deceptive, inadequately educated, greedy, inefficient and indifferent in cleaning our own house.' Another critic begins his thus: 'In every age the bar has enjoyed the cynically contemptuous admiration of its contemporaries and has been the faithful recipient of the secrets and confidences of a people that did not trust it.'

* * * * *

“When it comes to the count of inadequate education I fear we must plead guilty and throw ourselves upon the tender mercy of democracy. This, and the charge that we have been far too indifferent to house-cleaning, are the really serious counts in the indictment laid against us by our critics. * * *

“As to education, the matter has two aspects. A sound educational process should take account not merely of technical training in the law but of the development in the student of an entirely new set of instincts.

* * * * *

“Little by little we can make it clear that formidable educational requirements are in the public interest and that the public interest outweighs the individual interest of the excluded man. Remember, please, that when I speak of educational requirements I always include the elements of time and expense of preparation as a deterrent to the commercially-minded youth and those associations during study which stimulate a boy to acquire new instincts. Physicians have an advantage over us in respect to educational reforms. In the same way in war time the Navy has an advantage over the Army. Everybody understands that it requires educational equipment to perform an abdominal operation or to command a battleship. On the other hand, most people imagine that a voluble talker is already a lawyer and that any brave man can command a regiment. Little by little it will be recognized that West Point is no more rigorous than it ought to be and that a law school of the most exacting sort is not an affront to democracy but is necessary to the very life of the Republic.”

As members of the legal profession it is our duty to the public as well as to ourselves to see that those men who join the ranks are fitted, both from the standpoint of moral character and from the standpoint of general education and legal knowledge, to properly advise and look after their clients' interests. Charles Evans Hughes once said,

“The dream that we have, the vision that we have—don't let that fail—of lawyers together feeling that the interests of the profession are not the interests of a minority, but are the interests of all, feeling a duty to establish and maintain standards and willing to discuss with anybody the way to do it, but *intent on getting it done.*”

If we as lawyers will display a solid front in favor of these higher standards there is no doubt that eventually we will achieve them to the everlasting good of the profession and of the public.

WILL SHAFROTH.

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