

## A NEW LOOK AT PRACTICAL TRAINING

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Several distinguished members of the Legal Profession—practicing lawyers and legal scholars—have recently been engaged in what may be described informally as an intra-family hassle. The word will serve to emphasize the sporting atmosphere in which the argument has been conducted. The general topic is how best to turn law students into—not law clerks, but lawyers. The desirability of providing for the transition is not in question. It is favored both on behalf of the young men themselves and as a part of the public relations program of the organized bar. But when it comes to the means to be employed, the key note seems to be discord.

The participants in this familial disagreement who are practicing lawyers seem to regard the responsibility for providing a proper sort of maturing instruction as resting on the law schools.<sup>1</sup> Legal scholars who have taken a hand are inclined to leave the baby on the doorstep of the organized bar.<sup>2</sup> Those of us who, if not innocent bystanders, are at least interested observers would like to see the discussion move forward. The present article contains a proposal looking toward the future resolution of the differences. It proceeds on the basis of: Suppose we try this sort of a pattern; how will it work.

A convenient point of departure is the definition of objectives. It is suggested that the reason we want to turn

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1. A. S. Cutler, "Inadequate Law School Training: A Plan to Give Students Actual Practice"

37 *A. B. A. Journal* 203 (1951).

Arch. M. Cantrell, "Law Schools and the Layman: Is Legal Education Doing Its Job?"

38 *A. B. A. Journal* 907 (1952).

2. Joseph A. McClain, Jr., "Is Legal Education Doing Its Job?"  
A Reply

39 *A. B. A. Journal* 120 (1953).

E. Blythe Stason, "Legal Education: Postgraduate Internship"

39 *A. B. A. Journal* 463 (1953).

the law student into not a law clerk but a practicing lawyer is both for his own sake and for the sake of improving the public prestige of the profession. It is suggested that, whatever its content and characteristics, the process will require a further period of training beyond what is now offered by the traditional law school.

What is it we want to do for the young man? I suggest this question can be answered by two phrases. We want him to acquire "Professional Self Confidence" and "A Sense of Professional Responsibility." What do we have in mind for our public relations program? I suggest that if our most recent replacements have some of that particular type of competence and sensitiveness to ethical considerations which is characteristic of the most respected of practicing lawyers, there is only one direction in which public respect for the profession can go—up. We should go further than merely giving labels. As we use the term here "Professional Self Confidence" is something based on personal achievement. The young man who has it may, with becoming modesty, admit to himself: "I can do this or that professional act because I have done it. I admit I am not yet an expert in doing it, but neither am I a complete tyro. Not only can I do it, but I am able to perform in a manner consistent with at least the minimum standards of the general practitioner." The act may be writing a legal letter which advertises a lawyer, or preparing a case for trial which advertises a lawyer, or interviewing a client which advertises a lawyer. Since we have to live like gold fish, it is well to possess the characteristics of the more admired types of gold fish.

The term "A Sense of Professional Responsibility" points to something even more personal than our competence. It also is based not so much by observation as personal achievement. The young man who has it may, with real sincerity, admit to himself: "I know what is the morally and professionally proper step to take at this point. What is more, I have the courage to take it. After I have

taken it I shall try not to be smug because, thank God, I am not as other men." The act may involve a matter of conflicting interests, candor to the court, or restraint upon personal zeal. The decision marks the man as one who may be accepted by his fellows and by the public at large as one of the finer members of the bar.

There is no occasion to devote space to a discussion of the way in which at present we endeavor to accomplish these results. That would mean merely a repetition of the arguments in the controversy we have mentioned. There is no need to side with either the law schools or the practicing lawyers. Both systems have been criticized.<sup>3</sup> A more practicable approach is to inquire—What would be an ideal way of accomplishing the desired result. By setting down this sort of blueprint and indicating at least some of the specifications we shall have at least a basis for evaluating the present and other proposed systems. But before we start, let us agree that legal education is a life long task. We have, in the past, spent too much time looking at this or that period. What we need is a new look at the overall picture. That is the look which the public gives us. It cannot understand the technical points, but it can appreciate the work of a fine, competent, young lawyer.

The first specification, I suggest, relates to the point in this life long task at which this extra training period in practical competence and realistic ethics shall be given. It

3. In Pennsylvania the Law Practice Clerkship has come under criticism: "Perfunctory"

Lon L. Fuller, *Legal Education and Admissions to the Bar in Pennsylvania*

25 *Temple L. Q.*, 249, 291 (1952).

"My personal belief is that the law practice clerkship ought to be abolished. I do not think it can be patched up and made to work."

Brainerd Currie, "The Law Practice Clerkship"

24 *Pennsylvania B. A. Q.* 223, 239 (1953).

It has also been defended:

"The present system of clerkship in Pennsylvania prescribed by the rules of the Supreme Court satisfactorily provides the means by which the student can develop the ability to put his more formal learning into practice."

Hon. W. C. Sheely

101 *Pittsburgh Legal Journal* 3 (July 11, 1953) = 28

would appear that it should precede and not follow the moment of admission to the bar. As far as the student is concerned, he can, if he must, nerve himself to endure training as long as the obvious goal lies ahead. After all the medical student is able to adjust to seven years of preparation. To place practical training for lawyers in the period after admission is to involve the enterprise in the blighting atmosphere of anticlimax. From a public relations angle the same answer appears. The young lawyer who learns at the expense of his first few clients may easily do irreparable damage to the prestige of the profession. Most of us can recall incidents in that initial period of adjustment which for our own sake and the sake of the profession we should like to forget.

The second specification, I suggest, relates to the product which we expect to turn out as the result of our training period. If we have in mind a process in which each lawyer as he emerges will possess the matured competence of a Daniel Webster, a John G. Johnson, or of the deans of the bar in our times and a sense of ethical values like those of the late Justice Sharswood, we shall be biting off more than we can chew. It is enough if we take as our model a good general practitioner. The license certifies our belief that a man possesses the requisite professional knowledge, skill and character. But we ask—requisite for what? Today the public may well believe that the license to practice law indicates universal competence and maturity. It would be more realistic to tell everyone that young lawyer A has now demonstrated his competence and maturity as a general practitioner and that he knows enough about his own limitations to seek expert advice if and when he finds himself beyond his own depth. A later certification as a specialist would be good public relations for the lawyer but better for the profession itself. A further value of requiring every man to be a general practitioner before he becomes an expert lies in the direction of a greater solidarity of the profession. The requirement would provide a common de-

nominator of experience. If and when lawyers have to rally they can do so better around such a realistic shared experience than merely about the name "lawyer."

A third specification, I suggest, relates to the space in the student's life to be devoted to this extra training program. If we base it largely on time as the law school course and the preceptor stage are based, we are limiting the success of the enterprise by procrustean methods. Even in the field of criminal law the indeterminate sentence has been recognized as a means for rehabilitation. Three years, six months, any rigid time period will demonstrate persistence or ability to endure rather than competence. The boy scouts provide periodic occasions for earning merit badges. The present proposal is to borrow something of their experience. The applicant for the bar should be allowed to make progress through this stage as rapidly as he desires and is able. This will make more sense to him and will not diminish the value of the program to the public.

A fourth specification, I suggest, relates to the content of the training program. We have talked about requiring the student to learn and then demonstrate competence and ethical maturity. But we have not said what we want him to learn or how we are going to test his progress in recognition of professional responsibility.

Here is an opportunity to do something which has been too rarely done in the past—take the public into our confidence.<sup>4</sup> Let us suppose we could assemble a panel of say 100 or 500 lay persons, representatives of the various walks of life and conditions of men. Suppose we asked them perhaps from their own experience with lawyers to formulate 10 or 100 or 1000 points at which they form their opinion of the man to whom they take their legal business. With

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4. Something of this sort has already been tried. In the *Survey of the Legal Profession* Reginald Heber Smith prepared and submitted to "The Survey's Advisory Committee of Laymen" a memorandum concerning "Complaints Against Lawyers." The advisory committee contained distinguished names and it was hardly large enough to be representative of the client class, but it was a committee of laymen.

this list as a starting point and with the help of interested members of the bar we should, in due course, be able to fashion the "content" of the instruction in the training period. In other words, the content should not be something which you or I or both of us pick out of the air because we happen to see its importance.

A fifth specification, I suggest, relates to the manner of instruction. We know about the lecture and case methods, but here is a chance at something different. The student should make the transition from observer to participant. The instructor may *tell* him and *show* him, but before the period is over he should make the student do the various things with his own hands. At first this participation should be carefully *supervised* because in many portions of law practice there is a better way or a standard way of doing. But gradually the supervision should be *relaxed* so that eventually the student will be able to do what has to be done not only with his hands but with his head.

The groups of stuffed animals in the American Museum of Natural History in New York are amazingly life like and for certain purposes are invaluable. But if one proposes to teach a young man how to hunt and overcome lions, a trip to Africa on a safari also has its points. There is no substitute for a real client.

A sixth specification, I suggest, relates to the instructors. These men will make or break the program. They do not now exist. Or perhaps one may say that no one has taken the trouble to look for them. In the past careers have opened up for the legal scholar on the one hand and for the practicing lawyer on the other. Both ways lead—certainly not to wealth, but to an interesting and rewarding life. But the men we need must be dedicated not merely to law teaching alone or to client serving alone but both at once.<sup>5</sup>

5. Quintin Johnstone in his Report to the Survey of the Legal Profession on "Law Schools and Legal Aid Clinics" 3 *Journal of Legal Education* 533 (1951) makes this realistic comment. "The disadvantages of the apprentice system, even when combined with law school training, are that few practicing lawyers make good teachers."

No doubt legal scholars and practicing lawyers are elastic and can widen their areas of interest and competence. The point is that they will have to be trained or train themselves. One thinks, perhaps, of a group of men somewhat like the tutors at the English Universities, but with willingness to function in the world outside the ivy clad academic tower. Traditionally we have laughed at the absent minded professor as impractical and at the practicing lawyer who sends his apprentice over to the post office for a three cent stamp in order to teach him humility. But the present program would take neither of these worthies out of context. It would create a new context and people it with a new breed of professional men.

For any such training it will be necessary to confront the student with a series of real clients with real problems. It seems unlikely that the established law offices will contribute one or more of their expertly served clients to be used as a basis for student experimentation. But nevertheless in this work we repeat: there is no substitute for a real client with a real problem. Obviously the Lawyers Reference Service<sup>6</sup> and the Legal Aid field<sup>7</sup> may have a somewhat less proprietary interest in their clients. Maybe, provided assurances can be given that the quality of the legal service will not be allowed to decline, some arrangement can be made in these directions to allow student participation and gradual gaining of realistic experience under supervision.

A seventh specification, I suggest, has to do with the universal application of the training program to all applicants. We are always happy about the men who lead the class, who make the law review, who have won the distinction of feeling free to speak to the Dean before being spoken to. But there are other men—good enough to graduate and to be admitted to the bar but not, or perhaps more

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6. See the Annual Reports of the Standing Committee on Lawyer Referral Services of the American Bar Association for the development of this program.

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accurately not *yet*, possessed of distinction. Any one of them, leaders and followers, can and too often does make mistakes. These mistakes are hard on the offender and also hard on the prestige of the profession. It would be a misfortune if we should adopt a philosophy that certain applicants are too good to have to submit themselves to this extra training ordeal. Instruction and examination should apply to everybody, then our certificate may be awarded with confidence and not merely hope.

There is probably some magic in the number 7 which makes it a convenient stopping place. Clearly one could go on at length to set down other specifications. But the foregoing which cover: a training period before admission designed to turn out men with at least minimal competence and ethical maturity, based not on a definite period of months or years, but on demonstrated ability, in which the subjects covered are selected in cooperation with the client group and not merely out of the experience of lawyers, conducted under conditions where students under supervision would deal with real clients and their problems, taught by a specially selected and trained group of men, and with standardized requirements all over the state for quality and scope of work to be done and for testing—are enough for one brief article.

There are objections to setting up and implementing the plan, but they are neither insuperable nor as realistic as those affecting the present efforts to accomplish a comparable result. The plan will be expensive. It will require effort to attract, select and train qualified instructors. It will call for planning to make sure clients are available. Let us deal briefly with each of these.

The question involved in an expenditure is not so much what does it cost as whether the result is worth the money. Legal Education contrasted with medical education is run on an economical basis. If the public wants something better—and we assume it does—the money will have to be found, and if we and the public want it hard enough it will

be found. An unpleasant alternative might be a movement of clients to find some substitute for the lawyer.

It will take time and trouble to develop and train a corps of instructors. This is not nearly so serious a matter as might at first appear. The Legal Aid Clinic movement for the last quarter century has been pioneering in this field and its experience can be drawn upon. In fact, the foregoing specifications fit the better legal aid clinics as if made for them.

The major law schools in Pennsylvania have already taken a step in this direction.<sup>8</sup> With encouragement they might go further and turn out an outstanding Pennsylvania plan. But the adoption of the plan will have one somewhat regrettable result. It will remove another longstanding basis for disagreement between legal scholars and practitioners. One is sorry for this, but we cannot expect everything in this world. Perhaps the damage will not be irreparable. Other differences may be found if we look long and diligently for them. The profession incidentally may develop greater internal strength, a quality which it needs in a competitive civilization.

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8. For a number of years University of Pittsburgh Law Students have received clinical training in the Pittsburgh Legal Aid Society under the guidance of Wayne Theophilus, Esq. More recently the University of Pennsylvania has made a formal arrangement with the Philadelphia Legal Aid Society, under the direction of Robert D. Abrahams, Esq. During the past year Temple University Law School has also made an arrangement with the Philadelphia Legal Aid Society and Professor Walter C. Wright of the Dickinson Law School has offered a course tending in this general direction.