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A YOUNG LAWYER LOOKS AT HIS LAW SCHOOL TRAINING

WALLACE C. MURCHISON*

I am grateful for this opportunity to look back and appraise my law school training, but in one sense the opportunity comes too late. If, just after my graduation from law school here at Carolina in 1946, I had been asked to evaluate and criticize my training at that institution, I'm sure I would have jumped at the chance to tell my dean and professors exactly what was wrong with the law school and precisely what should be done to correct all defects, commencing, no doubt, with a complete rearrangement of the curriculum and the teaching staff. As you gentlemen well know, no one knows more about law and law schools than the man who has just graduated.

Now, however, seven years have passed since I departed from Manning Hall with diploma in hand, and I face this opportunity and this audience with much more humility and I hope more wisdom than I would have exhibited then. Now I am not so sure that I can tell you gentlemen how to run your law schools, and I'm doubtful whether I could begin to do as good a job as you do. Looking back on my legal education in the light of six years of solo practice I can say one thing positively—the training I received at this University law school was excellent and I have no serious fault to find with it. I hope that all of the law schools represented here today are doing the same fine job for their students. Indeed I'm sure they are. Saying that my training was excellent is not the same thing as saying that it produced in my case a good lawyer—only that from my point of view it gave me a very satisfactory preparation for the practice of law.

Law schools come in for plenty of criticism—both from students and from practicing lawyers. With some of this criticism I cannot now agree. When we were law students we often complained that the professors didn't spend enough time telling us what the law was. We wanted to have all the legal rules and principles handed to us so we could write them down in our notebooks and apply them later in the practice of law. It has been my experience that you forget a good many of the rules and that the courts and legislatures are always changing them anyway. We also used to object to professors

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talking about what the law ought to be and whether or not a particular legal principle or decision was right or just. Now when we argue questions which haven't been answered by our Supreme Court or which have been answered both ways, we are grateful for the insight our professors' questions gave us.

Some of the criticism of the law schools can only be met by going back to the basic question—what are the schools supposed to do for the future lawyer in his three years of training? In my opinion, the chief function of the law school is to teach the student, as former Dean VanHecke put it, to “think like a lawyer”. This is the indispensable thing . . . to develop an analytical, legal turn of mind—the ability to analyze the facts in any situation, to see the issues, and to analyze and apply the pertinent principles of law. Although imparting knowledge of legal principles is a most important function of the law school, I consider even this secondary to the development of the legal mind. In any event, when you put these two functions together, you have given the law schools a real task, one that can hardly be performed successfully in short of three years of conscientious and coordinated effort.

While I feel that the law schools are carrying out in a highly creditable way their principal functions, I agree with those who say that they could and should do a better job in training their students in the practical aspects of their profession. That this is a problem with which the law deans and professors are wrestling is shown by the program of this meeting. An entire morning has been set aside for discussion of “The Teaching of Practical Skills in Law School”.

The recent law graduate can speak with feeling on this topic because he is only a few years removed from its impact. I recall vividly the summer of 1947 when I rented an office and hung out my shingle in Wilmington. I had my old clothes on and was moving some furniture in when, much to my surprise, the father of one of my friends came in and said he wanted me to foreclose a deed of trust. With as much sincerity as I could muster I acted as if I knew exactly how to do this, even when he added that it would be necessary to substitute myself as trustee; but I knew, and I think he knew, that I didn't know at all how to foreclose a deed of trust. With a study of statutes and the help of an older lawyer I managed the job, but I thought then, and I still think, that the law school could have furnished me with this simple know-how.

No reasonable person could expect the law schools to turn out

experienced and skillful practicing lawyers. The ability to try a personal injury action before a judge and jury, to negotiate a labor union contract, to plan the distribution of a sizeable estate — these abilities come only through experience, and the law schools cannot supply that experience.

But in many aspects of practice the law schools can familiarize their students with the procedures and paper work. Some courses lend themselves more readily to this type of instruction than others. What practical training can be given in a course on constitutional law, or municipal corporations, or even on agency? On the other hand, in a course on wills and administration why shouldn't the student learn how to draft, execute and probate a will and to administer an estate, including the filing of federal and state death tax returns and the transfer of corporate stocks? Along with his study of domestic relations why shouldn't he learn how to bring an adoption proceeding, draw a separation agreement, obtain an uncontested divorce decree, and ask for custody of a child? In the field of real property couldn't the law school train its students to draw deeds, options and leases, to partition a tract of land, to examine a title, to bring a tax foreclosure action?

To the practicing attorney these things seem elementary. I have intentionally listed elementary practical matters because I believe that law students need and desire familiarization with them and that law schools can furnish this basic training without sacrificing other values. The place for complicated or advanced practical training, as I see it, is in the field of post-graduate or continuing legal education.

There are several advantages to a good program of practical training in law school. It produces better qualified lawyers to serve the public. It gives the young lawyer greater confidence, skill and earning power. It contributes to progress in draftsmanship and improved procedures throughout the bar.

In what manner can practical training in procedures and paper-work be best conducted in law school? I do not pretend to have the answer to this question, but I do have some ideas which I will throw out for what they may be worth. I would suggest that in each appropriate course a workshop period be set aside — attendance might even be voluntary. I would divide the group in half, appointing them counsel for conflicting interests or assigning them alternately the tasks of drafting and criticizing legal documents. Naturally the big problem is supervision. While the law faculty would necessarily bear the responsibility, I believe full utilization of student cross-criticism and the voluntary assistance of alumni in practice would

lighten the load considerably. Perhaps in the long run the only answer is the four year law school.

Before leaving this subject of practical training I want to mention a weakness in my legal education which has become more apparent with the passage of time, namely, an inadequate emphasis on the facts. In learning the law we were asked to assume certain facts or were given the facts. In practice you aren't given the facts — you've got to get them, to dig them out, preserve them, arrange them, present them! Thoroughness in finding the facts and resourcefulness in presenting them — these have won more lawsuits than a library of legal arguments. I believe every law school should teach its students the importance of the facts of the case and how to investigate, preserve and present them.

So much for the practical side of legal training. For my second and final point let me swing to the other side and present the challenge of the impractical and theoretical. I would like to put this question — are the law schools of today giving sufficient attention to the place and responsibilities of the lawyer in society? It seems to me that this question is pertinent in two respects. The first concerns the role of the lawyer in strengthening democratic government in America. The lawyer is peculiarly concerned with this goal — he is, or should be, by training well qualified to take the lead in improving democratic government on local, state and national levels. Furthermore, the future of his profession is at stake, because an independent bar can only exist in a free country.

No one who surveys conditions today can be complacent about the future of democracy and freedom, even in our own country. Communism has not only imposed totalitarian regimes on many lands but also has led to a reaction in America which threatens to undermine doctrines and procedures which we as lawyers hold fundamental. The principle of personal guilt, the right to be heard in one's defense, the right to confront and cross examine those who would testify against one, the idea that truth is best discovered by an adversary procedure which gives full opportunity for presenting evidence on both sides of a question, the distrust of hearsay evidence, the concept of full and free inquiry, the guaranty that one shall not be deprived of liberty and property except by due process of law — these things are under attack and the public seems indifferent or unaware of the dangers. Are the law students of today impressed with their importance and will they as lawyers rise to their defense? Are the law schools training lawyers who will live up to their opportunities and

responsibilities in bringing good government, honest government, democratic government to our communities, states and nation?

The second aspect of the lawyer in society which is of interest and concern to the law school is the lawyer as a member of the legal profession. Dean Pound has said that a true profession exists not for profit but for service. Even those who do not accept the ideal will admit that in both the professions and in business good service to the public is the keystone of success. Studies of the legal profession have raised serious questions as to the availability of legal services to all those who need them and as to the efficiency and fairness of legal services and procedures. I wonder if the law schools are bringing these problems to the full attention of their students and instilling in them the desire to work for their solution.

In closing, let me repeat that my suggestions or criticisms involve subordinate matters and should not detract from the law schools excellent performance of their primary tasks. This meeting is evidence that the deans and professors of our law schools are interested in maintaining those high standards and are alert to discover ways of improving legal education. Judging by the law men I have known, at Carolina and elsewhere, the professors of law of our day are intelligent, mature and conscientious teachers, striving, often under difficulties and with inadequate financial reward, to train the lawyers of the future in the finest traditions of the past. Gentlemen, I say to you in all sincerity, you have my respect and my admiration.