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## Legal Education--A Step in the Practical Direction

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## LEGAL EDUCATION—A STEP IN THE PRACTICAL DIRECTION

*A man can watch a house being built, but this does not necessarily mean he can build a home himself.*

*A man, after reading a magazine describing the theory of internal combustion engines, probably cannot adjust a carburetor or grind valves.*

*So a man can take a course in the law of decedents' estates and not be able to draft a will, or a course in evidence and not be able to lay a proper foundation so that handwriting exemplars will be admissible.\**

Can the law school teach required theory and at the same time provide the practical experience necessary for the student to be a lawyer, in fact, when he has graduated and passed the bar examination? The theoretical versus the practical approach in legal education has long been a source of controversy.<sup>1</sup>

The law graduate going into practice is virtually re-establishing contact with the outside world. For three years he has effectively ignored this outside world attempting to acquire the ability to analyze a legal problem and to think like a lawyer. When the new lawyer becomes an attorney, however, he leaves the academic world to which he has become accustomed, and begins to solve the problems of the society in which he lives. The facts he once studied

now become things he will (or must) personally elicit from an often-times confused human being whose facts are blurred with emotion. A will is an instrument he must prepare, not one to be read about. Suits are actions he must bring—no longer some remote activity. A contract is something he must draw . . . . He has a thorough grounding in the engineering of the law but an apprehensive sweat appears on his brow when someone hands him a plumbline.<sup>2</sup>

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\* Woodruff & Falco, *The Defender Workshop: A Clinical Experiment in Criminal Law*, 52 A.B.A.J. 233 (1966).

1. See Galvin, *Applied Legal Training: An Experiment in Legal Education*, 41 A.B.A.J. 1133 (1955).

2. Harum, *Internship Re-examined: A "Do" Program in Law School*, 46 A.B.A.J. 713 (1960).

Until around the turn of the twentieth century, the standard procedure in preparing for a bar examination was to become an understudy of some lawyer or judge. The apprentice attended trials, observed conferences between lawyer and client, helped draft papers and did preparatory work for the upcoming cases. In 1870, a new approach to preparation for the Bar began with the introduction of the case system at Harvard Law School.<sup>3</sup>

This technique of legal education, in use for the last hundred years, has brought complaints of the necessity for re-education of the graduate after he has acquired a license to practice.<sup>4</sup> As early as 1933, the late Jerome Frank attacked the law schools' methods:

What the student sees is a reflection in a badly made mirror of what is going on in courtrooms and law offices.<sup>5</sup>

This attack on the casebook method pointed to a missing element in the education of the law school graduate, the element of practice itself—the contact with the realities of practice, law office operations, clients, court clerks, attorneys, pleadings and judges.<sup>6</sup>

The general purpose of a legal education is to teach the student to "think like a lawyer."<sup>7</sup> The problem in accomplishing this purpose becomes, consequently, one of emphasis. No law school offers only theoretical courses; neither does any law school have only "how to do it" courses. Law schools usually offer a combination of the two approaches, the relative constituents of theoretical and practical training varying from school to school.<sup>8</sup> What this degree or balance should be cannot be answered until a determination is made of the aims and objectives of the legal education. This determination is the joint task of judges, lawyers, bar examiners and legal educators.<sup>9</sup>

3. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45 (1955).

4. See Galvin, *Applied Legal Training: An Experiment in Legal Education*, 41 A.B.A.J. 1133 (1955).

5. Pound, Frank & Vanderbilt, *What Constitutes A Good Legal Education*, 7 A.L.S. Rev. 887, 899 (1933).

6. Harum, *Internship Re-examined: A "Do" Program in Law School*, 46 A.B.A.J. 713 (1960).

7. Bradway, *Legal Clinics and Law Students: Rocks and Cement for Better Legal Education*, 41 A.B.A.J. 425 (1955).

8. Galvin, *Applied Legal Training: An Experiment in Legal Education*, 41 A.B.A.J. 1133 (1955).

9. Stevens, *Legal Education for Practice: What the Law Schools Can Do and Are Doing*, 40 A.B.A.J. 211 (1954).

## I. WHAT SHOULD BE DONE (OBJECTIVES)

It has been suggested that upon graduation every law graduate should be competent to

examine a title; write a deed and other customary instruments; close a real estate deal; institute and prosecute suits, including the statutory proceedings of his jurisdiction; defend a criminal; prepare individual, partnership and fiduciary tax returns; work out an estate plan; prepare and probate a will; administer an estate, with the federal and state returns, etc.; and form, operate and dissolve an individual proprietorship, a partnership, and a corporation, including compliance at each of these stages with all the requirements of federal, state and local laws, tax and otherwise, applying to a small business.<sup>10</sup>

Although it would be an ideal goal for law schools to instill competence in each of these areas, it is impractical, if not impossible, in the average three year course of study. Many schools do give some instruction in most of these subjects. Even so, about ten years are required for the practicing attorney to develop sufficient skills in the listed areas.<sup>11</sup>

Perhaps it is the overall objectives of legal education which need recasting. As a starting point, compare the methods of medicine with those of law.

The study of medicine is not limited to the analysis of post-mortem reports, to see what mistakes were made by the attending physicians. The medical student is taught how to do it right in the first place. He watches the operations of eminent surgeons. He sees top-ranking physicians examine living patients. He learns to take a pulse. He listens to hearts and lungs. Most important of all, he does things not merely once, as a law class visits a courthouse, but literally hundreds and hundreds of times, until they are second nature.<sup>12</sup>

It is argued, however, that to bring live clients into the schools or take the classes to courtrooms or law offices is impossible;

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10. Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907, 909 (1952).

11. Stason, *Legal Education: Postgraduate Internship*, 39 A.B.A.J. 463 (1953).

12. Cantrall, *Economic Inventory of the Legal Profession: Lawyers Can Take Lesson From Doctors*, 38 A.B.A.J. 196, 199 (1952).

that the medical profession has the advantage of teaching hospitals.<sup>13</sup> Whether or not this be true, reform has long been urged.<sup>14</sup>

Some courses cover areas of the law which are readily adaptable to a pragmatic approach. In these areas, law schools can and should educate their students in this manner.<sup>15</sup>

## II. WHAT CAN BE DONE (SPECIFIC PROPOSALS)

Many proposals for obtaining this practical experience have been made.<sup>16</sup> Judge Frank would return to the apprentice system, but on a more sophisticated level, where the law school would resemble a "sublimated law office and the students would act as professors' assistants or apprentices."<sup>17</sup> The practical aspects of appropriate courses could be covered in a workshop period, dividing the group in half, appointing them counsel for conflicting interests or having them draft and alternately criticize legal documents.<sup>18</sup>

The missing element of practical education could also be supplied by requiring the law student to work a specific number of

13. Stason, *Legal Education: Postgraduate Internship*, 39 A.B.A.J. 463 (1953).

14. *New York University's Law Center: Cornerstone Laid at Impressive Ceremony*, 36 A.B.A.J. 297, 299 (1950):

The law schools of the country cannot continue to lag behind the engineering and scientific schools with their laboratory work or the medical schools with their clinics. It is not right that young lawyers should learn the skills required in the profession at the expense of their clients.

15. Murchison, *A Young Lawyer Looks At His Law School Training*, 6 S.C.L.Q. 194, 196 (1953):

[I]n 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?

16. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45 (1955), 46nn. 7, 8 & 9; *Id.* 93 nn. 33 & 34 (1955).

17. Pound, Frank & Vanderbilt, *What Constitutes A Good Legal Education*, 7 A.L.S. Rev. 887, 895 (1933).

18. Murchison, *A Young Lawyer Looks At His Law School Training*, 6 S.C.L.Q. 194, 196 (1953).

hours in a law office, either during his senior summer or his senior year—for credit toward his law degree in lieu of pay. This internship for credit has been successful in other fields, and it accomplishes more than any “make believe course.”<sup>19</sup>

Another alternative is a system which entails the requirements of two bar examinations; the first to be taken immediately after graduation covering the materials presently included in bar examinations, and the second to be taken approximately a year later covering local law and the “how to do it” type of material pertinent to the jurisdiction in which the graduate expects to practice. After successful completion of the first examination the graduate would be allowed to practice under supervision with the right of appearance in designated lower courts. All graduates who found employment would be permitted to prepare themselves for the second examination by the employing firm or corporation. All other graduates (about 15% is suggested) would be required to prepare themselves by entering an Institute for Postgraduate Professional Education to be established in each state under the auspices of the state bar association.<sup>20</sup>

The “legal clinic” furnishes another potential source of practical experience. The gap between theoretical knowledge and practicalities could be narrowed by requiring the young lawyer, upon admission to the bar, to spend some time in a “legal clinic,” which handles the functions both of Legal Aid and Lawyer Referral Service. This would give the graduate the “feel” for the law which is lacking in theoretical problems. Under the supervision of recent alumni, the student would spend from six months to two years in the clinic; for his services he would receive modest pay.<sup>21</sup>

The variety of these suggestions indicate that commentators and educators are in disagreement as to when and where this practical instruction and supervision should be given.<sup>22</sup> The

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19. Harum, *Internship Re-examined: A “Do” Program in Law School* 46 A.B.A.J. 713-15 (1960). See the article for the details of Mr. Harum's plan.

20. Stason, *Legal Education: Postgraduate Internship*, 39 A.B.A.J. 463, 466 (1953). See Dean Stason's article for a detailed discussion of his proposal. See also Harum, *Internship Re-examined: A “Do” Program in Law School*, 46 A.B.A.J. 713-14 (1960).

21. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45 (1955).

22. See Harum, *Internship Re-examined: A “Do” Program in Law School*, 46 A.B.A.J. 713-14 (1960), for a discussion of when the internship program should take place and the various opinions in this area.

"supervised legal clinic" is favored, because it would make legal services available to a large class of persons who are economically unable to employ private counsel. Pressure for socialization of the legal profession could thus be relieved. Collateral benefits from this proposal are promotion of the public welfare and increased esteem of our profession.<sup>23</sup>

There is the counter argument however, espoused by some, that if the practical education can be given in a law school, it is there that it should be given; that Legal Aid Societies or Referral Services are designed to serve the public and not the recent law graduate.<sup>24</sup>

### III. WHAT IS BEING DONE (A SURVEY)

The author has attempted to make a survey to discover what type of internship programs are presently being conducted throughout the United States. The survey indicated a wide variety of programs presently in effect.

Perhaps the most intricate and advanced program offered in any state is the Legal Internship Pilot Program directed by the Oklahoma Bar Association.<sup>25</sup> Formed in 1964, the Legal Internship Pilot Program is an experimental study undertaken by the Oklahoma Bar Association to obtain factual data to use in determining the desirability of some type of permanent program of internship and to determine the manner of operation of such a program, should it be found desirable. Since its formation the bar association has, through a step by step method, secured the adoption by the Oklahoma Supreme Court of "Rules Governing Limited License to Practice." This limited license is granted to those applicants approved by an interviewing panel. The license may be used until the licensee withdraws from school or until the results of the Oklahoma Bar Association are published. It is subject to revocation by the Oklahoma Supreme Court by its own motion.<sup>26</sup> Applicants must not lack over thirty academic hours toward completion of their law degree and must have performed a minimum of sixty hours of legal work under supervision of a

23. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45 (1955).

24. Bradway, *Legal Clinics and Law Students: Rocks and Cement for Better Legal Education*, 41 A.B.A.J. 425 (1955).

25. See, Culp, Deaton & Cooper, *Legal Internship Pilot Program Oklahoma Bar Association*, 14 STUDENT L.J. 14 (Dec. 1968).

26. Okla. S. Ct. R. V(B).

practicing attorney.<sup>27</sup> The license necessarily limits the degree of participation in criminal cases to comply with constitutional requirements, and it limits representation of clients in civil cases to tribunals which are not considered courts of record.<sup>28</sup> Legal interns are not allowed to charge clients for their services; they can however, receive compensation from the supervising agency or attorney.<sup>29</sup> Although the data concerning the program in its first year of operation has not been fully evaluated, it has proved of value both to the Oklahoma Bar and to the participants, and will probably be made a permanent program.<sup>30</sup>

Many law schools sponsor volunteer programs utilizing law students on a part time basis to afford limited services to indigent persons. These programs have grown and increased with the influence of the Office of Economic Opportunity. An outstanding example of such a program is found at Emory University School of Law.

Emory has founded the Emory Community Legal Services Center. Facilitated by the law school Legal Agency Act of 1967,<sup>31</sup> third year law students are allowed to engage in limited legal practice. These students can perform all legal services which a lawyer could perform for clients. Pleadings prepared by these students must be co-signed by a practicing attorney; and an attorney must be present in court when the student appears on behalf of the client. Admission to practice is granted to the student on a county-wide basis by a judge of the County Superior Court upon petition and certification from the Dean of the Law School. Additionally, every law student graduating from Emory is required to donate at least thirty hours of legal aid to the poor through a recognized legal aid society. Emory also provides a Legal Assistance To Inmates program and a Poverty Law Fellowship program, in which students participate full time during the summer. The Center also operates a law reform unit, using both students and attorneys. These programs have been met with enthusiasm on the part of the students, their clients and the bar.<sup>32</sup>

27. Okla. S. Ct. R. III.

28. Okla. S. Ct. R. VI.

29. *Id.*

30. Culp, Deaton & Cooper, *Legal Internship Pilot Program Oklahoma Bar Association*, 14 *STUDENT L.J.* 14, 17 (Dec. 1968).

31. GA. CODE ANN. § 9-401.1 (Supp. 1968).

32. Letter from William H. Traylor to Phillip E. Walker, Nov. 7, 1968, on file in S.C.L. Rev. Office.



Several schools provide a service to secure summer employment for law students entering their senior year. The University of South Dakota School of Law, in cooperation with the South Dakota State Bar Association and certain foundations, has a summer internship program in which students, who are ready to begin their senior year, work for approximately \$100.00 a week in the office of any lawyer in the state, in OEO Legal Aid Offices, or in state government legal offices. The students who participate must be in good scholastic standing at the law school. No real problems have been encountered in placing the students, and most of those eligible participate in the program.<sup>33</sup> Virginia, too, has such a summer program, in which their law schools endeavor to place all law students who have completed their second year, in a law office in the state. The pay is usually \$100.00 a month, and the program has been found beneficial to both the student and the firm.<sup>34</sup>

To solve the problem of practical education, some states require a period of practice before admission to the bar. Delaware requires a six months clerkship,<sup>35</sup> while Rhode Island's requirement is three months.<sup>36</sup> Other states require a skills and methods course or course of general practice subsequent to graduation but before admission to the bar instead of the required clerkship.<sup>37</sup>

Finally, to allow a greater degree of student participation through internship programs, many states have found it necessary to amend their court rules and licensing statutes.<sup>38</sup>

An ever increasing effort by the law schools and bar associations to provide practical training for the law student is apparent. Practical courses such as practice court, courses in use of the law library, training in legal research, seminar and problems courses, and courses in office management have long been avail-

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33. Letter from William K. Sahr to Phillip E. Walker, Oct. 16, 1968, on file in S.C.L. Rev. Office.

34. Letter from R.E. Booker to Phillip E. Walker, Oct. 15, 1968, on file in S.C.L. Rev. Office.

35. Letter from James T. McKinstry to Phillip E. Walker, Oct. 22, 1968, on file in S.C.L. Rev. Office.

36. Letter from Edward P. Smith to Phillip E. Walker, Oct. 28, 1968, on file in S.C.L. Rev. Office.

37. Letter from Bronson C. LaFollette to Phillip E. Walker, Nov. 18, 1968, on file in S.C.L. Rev. Office. *See also* Bulletin of Univ. of Wisc., 26 (1968).

38. Colorado, Connecticut, Florida, Georgia, Illinois, Massachusetts, Michigan, Monterey, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Tennessee, Texas, and Wyoming, have altered their rules to allow student participation. See the Law Student Division of the American Bar Association's compilation of court rules and state statutes authorizing student court appearances.

able and are receiving even wider emphasis. A continuing awareness, however, of the need for practical training and experience coupled with a search for the new possibilities in the area of legal internship is necessary to insure progressive legal education.

#### IV. AN EVALUATION

In defense of complaints of difficulty of transition from law school to practice, one educator stated that he could not

help but wonder whether the difficulty doesn't stem more from the beginner's fear of the unknown than from lack of ability and training to cope with the problem at hand. A law student who has learned how to think, who knows how to read and brief a case, who can spot legal issues, who has learned to analyze and synthesize, to reason by analogy, who has mastered a great body of general legal principles, who has learned that rules do not solve cases, who has learned to look behind the rules to find the reason for them, who has talked about, discussed, and thought about the sociological, historical, economic, moral and human factors bearing on legal principles, who knows the importance of facts in our system of jurisprudence, and who has learned to deal with the application of rules to varying fact situations, who is familiar with our judicial machinery, its strengths and its weaknesses, who has at least a speaking acquaintance with the place of legislation in our system, *ought* to be able to, and in most instances is able to, cope with any problem which he is likely to get when he first starts in practice.<sup>39</sup>

On the other hand, it has been insisted that "the printed reports contain but the ossified remains of an old controversy, which is by no means the same thing as a live client with a live grievance."<sup>40</sup> Recognizing this fact, the trend has been for the law school to provide more practical education for its law students, enabling them to bridge the span between the theoretical and practical knowledge,<sup>41</sup> to "cement the rocks of learning

39. Stevens, *Legal Education for Practice: What the Law Schools Can Do and Are Doing*, 40 A.B.A.J. 211-12 (1954).

40. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45, 92 (1955).

41. *Id.*

together.”<sup>42</sup> South Carolina, its law schools, court systems and legislature would do well to inquire into the programs of these other schools and implement programs of her own, lest she fall behind.

That experience is invaluable to all professions must be conceded. There is no reason for the lawyer to be less competent upon graduation in the practice of his profession than the accountant, engineer, physician or dentist. A large number of our recent law school graduates, however, are a menace to the public.<sup>43</sup>

If the concern were only for the recent graduate, the problem would not be so great. He could continue, after passing the bar examination, to acquire his practical skills in this trial and error method. Eventually he would become a capable lawyer. Rather it is the client who would suffer from this “learn as you go” method. Certainly, it is not the primary concern of the client to provide an opportunity for his counselor to learn his trade. Yet this is what happens when a client brings a matter to a new practitioner; and it is only to a degree less true when the recent graduate practices with another lawyer or firm. Is this in keeping with the responsibility owed to the general public by a great profession?<sup>44</sup>

Lawyers are required to protect the rights of citizens and to insure proper function of our society. Society needs the lawyer to assure its proper functioning and to protect its citizens’ rights. The law schools, conversely, owe a duty to society; and this duty is justly described:

Society looks to the law schools to properly train young men and women to be, *upon graduation*, lawyers to whom the people can look for adequate, competent lawyer-services.

Society’s contract with the law school is to train lawyers, not to produce half-lawyers, taught some of the theories of the law but not how to put those theories into practice.<sup>45</sup>

PHILLIP E. WALKER

42. Bradway, *Legal Clinics and Law Students: Rocks and Cement for Better Legal Education*, 41 A.B.A.J. 425 (1955).

43. Landman, *The Curriculum of the Law School*, 47 A.B.A.J. 156, 158 (1961).

44. Clad, *The Gap in Legal Education: A Proposed Bridge*, 41 A.B.A.J. 45 (1955).

45. Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952).