

1971

Editorial

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Recommended Citation

Foster, Robert W. (1971) "Editorial," *South Carolina Law Review*. Vol. 23 : Iss. 1 , Article 2.

Available at: <https://scholarcommons.sc.edu/sclr/vol23/iss1/2>

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EDITORIAL

DEAN ROBERT W. FOSTER*

A convenient way to describe the mission and role of our Law School as we see it is to dissect the title of the institution of which I am now Dean. The first part of the title, "The University of South Carolina," can be seriously misleading since we are in fact the law school for the State of South Carolina. It is, of course, true that we happen to be housed at the University of South Carolina; and of course, it is quite important that we be a part of a University community. I think it should be seriously realized, however, that as the only institution in the state charged with the responsibility for legal education, we are the extension of every college and university in this state for the graduates of those schools who wish to continue their education in the field of law.

Perhaps the most misleading phrase in the title that I am examining is "School of Law." There is no doubt that one of our prime missions and responsibilities is to serve as the State's institution to provide education and training for those who seek to enter the legal profession. To the extent that the word, "School," indicates that the function of our institution is limited to the teaching of law, however, the title does not adequately reflect what is and should be the sum total of the institution's function. A much more appropriate title—a title that our new building should bear—is the University of South Carolina Law Center. I think that concept requires some further explanation and gives me the opportunity to outline to you what I see as the several missions of our institution.

The first is, of course, obvious—to produce graduates to replenish the bench and the bar. While this objective will never change, the means of its accomplishment have been, and will continue to be, under constant examination so far as curriculum and methodology are concerned. We must insure that we are maximizing the use of the three year period during which our students are with us to the end that they will be able to meet

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the changing challenges of our profession, not just for the first few years after graduation but for the remainder of their professional life. It is our responsibility to equip our graduate so that he may mature in the law. We must provide a foundation on which, with his own efforts and self-education, he will throughout his career have the capacity to deal with problems not yet even thought of. Time does not permit me to go into any kind of detail as to the kind of evolutionary changes that we envision in legal education, but we do have a general blueprint with which to work. It has been a cliché among legal educators for many years that in the first year we scare the students to death, the second year we work them to death, and the third year we bore them to death. I must confess to some considerable truth in this statement, and, therefore, much of our changes will come about in a revision to the approach of the third year of law school and with much heavier emphasis on seminar work, both of the research and problem-solving types as well as our newly developing clinics program in which third year students are given an opportunity to work with real people and real problems and, subject to the approval of the court and under limited conditions, to work in real courts.

We are very aware that there is some justification in the attacks leveled at legal education today, that ours is the only profession wherein the trainee is not accorded some form of laboratory conditions in which the student may begin to observe and learn the application of the content of the subject matter before he is turned loose on society. But at the same time, we must not allow a dilution of the intellectual depth of our program. And this above all, we must inculcate our students with a sense of professional responsibility and public service.

As our second basic mission, we feel that a Law Center should cooperate with the organized Bar in developing and implementing appropriate programs in the field of continuing legal education to improve the efficiency of the active members of the bar. We accept the fact that upon graduation from Law School, there is a change of status from law student to "student of law." We also accept the fact that, with the rapid changes in the types of problems with which the law must deal, the busy practitioner and judge who are consumed with their day to day problems need some direction and organization of study of newly developing areas of the law. We offer ourselves as that source to serve as coordinator of continuing legal education

for the South Carolina Bar. Through this vehicle, we hope to develop more institutes and seminars, a series of professional educational television programs, and sponsor and encourage the writing of a series of publications oriented to South Carolina law. This should be the type of "graduate program" in which we should concentrate on the specialties in which practising lawyers are interested.

Our third principal mission, which we feel makes the title "Law Center" more appropriate than "School," is that we envision increased activity in the area of law development and reform employing the physical resources of our anticipated new building and expanded law library and the personnel resources of our faculty with student research assistants. In the past, several members of our faculty have arranged individually with the Judicial Council and other agencies of the state to prepare studies in specific areas usually leading to legislative action. These have included such projects as the South Carolina Corporation Code, the Uniform Commercial Code, and a Proposed Criminal Code. While this *ad hoc* approach to the study of proposed legislation by members of the law faculty has accomplished much good, what is really needed is a permanently funded and established organization, which we might call the South Carolina Law Institute, located at our Law Center and designed to serve as a part of the process whereby legislative proposals can be submitted to the South Carolina General Assembly in the interest of the improvement of the administration of justice in this state.

This proposal is, of course, not original with me. The problem which the Institute is designed to serve was first stated by Justice Cardozo in an article in the *Harvard Law Review* in 1921 entitled "A Ministry of Justice." In the opening lines of that article he identified the problem as follows: "The courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is that there is no one whose business it is to give warning that help is needed." In his usual eloquent language, Justice Cardozo goes on to say: "The means of rescue are near for the worker in the mine. Little will the means avail, unless lines of communication are established between the miner and the rescuer. We must have a courier who will carry the tidings of distress to those who are there to save when signals reach their ears. Today courts and legislature work in separation and aloofness. Legis-

lature and courts move on in proud and silent isolation. Some agency must be found to mediate between them." He then went on to propose the solution: "This task of mediation is that of a Minister of Justice. The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged."

What I propose is that there be established within our Law Center, the South Carolina Law Institute to serve as Cardozo's Minister of Justice as a detached observer and impartial critic to review and consider suggestions from judges, public officials, bar groups, and members of the law faculty as to existing inequities, defects, conflicts, and anachronisms in the law and, based on studies in the library and in the field, make recommendations for solutions and modernization of the law.

Examples of the backlog of proposals which such an institute might presently be considering if it existed today would include the proposed Probate Code, the Uniform Consumer Credit Code and other consumer protection laws, a new Code of Criminal Procedure, and laws dealing with such matters as creditor-debtor relationship, civil procedure, state taxation, insurance, juvenile delinquency and retardation and environmental control where a total scheme of legislation is needed. There are, of course, many other matters of needed law reform. In some of these areas, an additional impetus for speedy state action is the growing pressure for federal legislation, such as in the case of consumer protection laws, where it is felt that the states have failed to act.

If responsibility for this task should be centered somewhere, I suggest that the most likely place is our Law Center with its physical and personnel resources—faculty with student assistants—where scholarship and a habit of research as well as the necessary objectivity are to be found. Improvements in law should come from research, and the burden of research falls on the law school which then should serve as the research agency of the state.

I do not see such an institute as being in competition with the South Carolina Legislative Council which is consumed with the task of drafting legislation, nor with specific legislative committees engaged in public hearings and consideration of legislation, nor with South Carolina Bar committees established to consider legislation. Rather, it would be as a research suppor-

tive arm of the South Carolina Judicial Council whose statutory responsibility is to make a continuous study and survey of the administration of justice in this state and to receive and to consider criticisms and suggestions. I suggest that the Institute come within the jurisdictional control of the Judicial Council, since its function would be based on the existing legislative description of the Council's function and its statutory membership is composed of public officials most directly concerned with law reform.

With regard to funding, I would hope that in many instances matching federal and foundation grants would be available for some of the projects. For example, a proposed code of criminal procedure may be partially funded by the Law Enforcement Assistance Administration. We know that presently many sources of funds are unavailable because of the lack of matching funds or the failure to make application and submit proposals.

Finally, let me make it clear that we are not seeking any jurisdiction or power beyond that of making recommendations which, of course, the legislature is free to reject. We seek only to open the lines of communication between the legislature and courts to the end that rules of law—law in action—will more closely approximate the ends of justice and that we may more effectively perform our self-appointed mission as a true Law Center for the state in contributing to law reform and development.

If this proposal for the establishment of the South Carolina Law Institute is favorably received, and its necessary funding made available, I should think that the details of organization should be worked out as soon as possible. In broad outline, we would want to insure adequate housing in our new law building, and we would want to employ a full-time director of the institute who could inspire, plan, lead, and execute the project. I would assume that most of the research will be conducted by members of our law faculty, drawing where necessary on other disciplines of the University, with assignments according to their particular areas of expertise. If this plan is accepted, we would want to consider, as a factor in our future hiring policies, the interest and capability of faculty members to be available for this activity.

This abbreviated and broad overview of the role of the South Carolina Law Center as the intellectual and service catalyst for our profession is designed to make the point that we are anxious

to be a partner with the state and federal judiciary, the South Carolina Bar, and the South Carolina General Assembly so that all of these forces can be brought together in promoting our common objective of the continuing improvement in the administration of justice.