CURRICULA FOR LEGAL STUDIES

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I. Introduction

The two major purposes for the establishment of a curriculum, regardless of where the law school may be located, are generally, first, to teach the student those subjects which that jurisdiction considers basic law, and second, to satisfy the requirements set up for the bar examination in that jurisdiction. The two purposes are actually intertwined because the subjects selected for bar examination are those which that jurisdiction considers basic law.

The curriculum, however, is not purely a matter of the selection of subjects. It will be only as effective in preparing the student as the method of presentation and the instructor who presents the subject. It will depend a great deal on whether the textbook method is used to the exclusion of casebook, or vice versa, or the two are used in proper proportion to each other. It should be stated, also, in this connection that the instructor who insists on expounding to the first and second year students what he thinks the law ought to be and how it should be written is being unfair to the student and to his theory. He should realize that in all probability, he is talking over the heads of these elementary law students, that it would make as much good sense as a medical instructor telling first year students in medicine about his ideas for improving the methods now being used in brain surgery.

It should be apparent to that instructor that such suggestions are better left for post graduate work when the student has had an opportunity to form certain impressions of his own, even better after he has had an opportunity to put the law into actual operation when he will have a much better chance to decide where the injustice lies, and what should be done about it.

Further, it should be remembered that regardless of social or public obligations, the duty of the school is to prepare that student to pass whatever examination is required in that jurisdiction. It is grossly unfair to that student to take up his time on what this individual may think the law should be when it means time taken away from a true understanding of what the law actually is. Unfortunately, the bar exam will require answers on the present state of the law, and the school owes it to the student to present the least confused statements on what the law actually happens to be. Unless the student succeeds in becoming a lawyer, he will have little opportunity to carry into use the theories being expounded by his instructor.

II. The Curriculum Proper

There are certain subjects that have been recognized as basic required law by the North American states unanimously, and those are contracts, criminal law, equity, evidence, pleading and real property. About 85% of our states also list constitutional law, corporations, negotiable instruments, agency, torts and wills (or probate). About 75% of the states favor domestic relations, legal ethics, partnership and personal property, and about 60-70% also

named conflict of laws, practise, sales and trusts.

It is difficult to generalize with regard to the South American and European countries, but it may be said that one may expect to find the subjects of contracts, property rights, wills and succession and domestic relations in the curricula of all of them, while some offer courses on political science and economics in the law school. It may be also said that the students are taught mostly by textbook material, that the instruction is very largely theory and that the student ordinarily is not given an opportunity to put into practise what he has learned until he becomes a licensed practitioner.

III. What the Curricula Should Be

The curriculum should be gauged to meet the needs of the public in that state or country; it should be kept pliable so that subjects which have become important in the life of the community may be added or substituted in place of those whose importance is declining. How can the organized bar complain about the unauthorized practise of the law by laymen when we do not have professional lawyers trained to do what the public needs? The first inroads are made when the bar can not compete with them; after the laymen have established themselves, it is increasingly difficult to dislodge them, but the bar must be vigilant to observe the needs of its community and be ready to supply them with lawyers who can do the work, by changes in the curriculum of the school and by adding courses in continuing education to those given by certain bar associations for practising attorneys.

It should be borne in mind by those who establish the policy of the law school and its subjects, that the idea is to prepare indi-

viduals for the PRACTISE of the law, not merely its theory. The word "practitioner" is not of accidental choice; it means one who actually engages in the physical practise of the law, and as such, he must be prepared for it.

The primary purpose of the law school is not to turn out law professors or philosophers in the law but those who must be prepared to represent the average litigant who needs redress for civil or criminal wrongs, or who needs to be advised so that his acts in personal and business life will not result in loss of money, property or injury to others. The problems of the average litigant are very real and very personal, and if the school can equip its graduate so that the best possible service can be rendered those who seek his counsel, it will then be fulfilling one of its major obligations to the community in which it exists, and at the same time, those who have made it possible will be raising the profession to the level it deserves to occupy, sustained by the confidence, respect and good will of the public they serve.

The young lawyer who is a total loss to himself and his client when his client needs him most will only earn for the profession the contempt and ridicule of the general public who will be learning the hard way that our law schools are grossly negligent in their preparation of their graduates. The bar association must realize that they are amiss when they do nothing to correct the situation that arises when a young lawyer causes the loss of his clients money, property--or life, because he is such a stranger, totally, to the courtroom or the PRACTISE of the law.

The law school that turns out such a fraud on the public should itself be liable in damages in an action by the graduate for a similar fraud practised upon him. They have taken the money of the student under the false pretense that they are preparing him to practise law, when in fact, he will have to learn the PRACTISE of the law after admission to the bar by heartache, grief and humiliation not to mention the loss of his hard-won client simply because he did not know how to prepare and present his own case. There is no excuse whatsoever for such occurrences. Yet those who have the highest standards: our approved Class A law schools, are turning them out by the thousands, turning them loose on the public just as if they were ready to be trusted with a client's money, property--or life, when in fact, the vast majority of them have never seen the inside of a courtroom, have never prepared pleadings, have never seen many of the legal documents they pretend to know how to draw, and know absolutely nothing about the orderly presentation of a case, be it civil or criminal, jury or non-jury, nor even how to address the court.

Have the members of the faculty ever stopped to consider the feelings of their graduate when one night,a neighbor of that graduate suddenly calls at his door, saying, "My son is in jail. You've got to get him out at once," and that proud "practitioner", with sinking heart, suddenly realizes for the first time that he hasn't the faintest idea what to do, and his client is waiting for his answer. Somewhere, in the dim recesses of his mind he remembers that habeas corpus must have something to do with it, but what to say? What to do? Where to go? What to ask for? And so his client says:"You're

a lawyer, aren't you?" And that young man realizes for the first time, feeling the full weight, that he is not a lawyer at all; that he had no right to ask that man to put his trust and confidence in him; AND THAT THE GREATEST POSSIBLE WRONG HAD BEEN DONE HIM BY HIS OWN SCHOOL. He knows now that the job of becoming a lawyer has just begun for him, and he will learn it in the school of hard knocks, at the expense of his clients and of his own reputation, not to mention the total loss of his feeling of self-confidence.

It does not have to be this particular illustration; it can arise in any number of other ways. That client's opening sentence could just as well have been, "We're going into escrow this afternoon. A lot of money is involved here and I want you there to represent me." Escrow? Oh yes, he had heard it mentioned many times in his property courses, but what was it? What did it look like? And what in the world was he supposed to do when he got there? Oh yes! He was going to represent his client. How? With what? Doing what? The same feeling of utter confusion, and he appears at the escrow, advertising with every word and every act his total ignorance and unfamiliarity with the proceedings.

It is absolutely impossible to exaggerate the feelings of that young lawyer at a time like that. How well can he advise and guide his client when he has just picked up a strange looking document, and realizes/that for the first time in his life, he is looking at a deed of real property. That lawyer may have been an honor student at an approved Class A law school; he may have written excellent law review articles for publication on close and delicate questions of

constitutional interpretation. But he is no more fit to ask the trust and confidence of any client than.....but why go on? The crime is already complete.

It should not be open to question that two years of the three year law school program will be adequate to teach the student all he needs to know to pass the bar examination and needs to know of basic law courses. The recent war gave us, among other things, some new ideas in the field of education that can be put to good use. If for some reason it appears that two years are not enough, then the law school had better inquire to ascertain what the instructor is doing to waste the students' time. They are not expected to teach them in a basic course anything more than a sound foundation.

The third year should be spent ENTIRELY in a clinic of some kind which affords the student some form of an internship, which gives him an opportunity to put into use the sound principles of law he has learned. The single course offered by some schools for trial and appellate practise cannot possibly suffice. In that third year, that student should be thoroughly exposed to what he will have to do in the actual practise of the law, and shown how to do it. It is impossible to make it too detailed. He should, first of all, learn the physical location of his local courthouses, where to find the filing clerks for each department, the court clerks, the commissioners, the court reporters, the judges. He should find the various levels of courts, the highest court, the superior and inferior courts. He should learn courtroom procedure, what to do on entering the courtroom, where to sit, what to do next, and how the

presentation of a case differs in the various departments of his courts. He should find the jails and the law enforcement offices. He should become thoroughly familiar with legal research in the preparation of trial and appellate briefs; he should learn at once where to find the forms used by his courts, when to use them and how to use them. He should be familiar with the issuance of legal process and the service of such process. He should make friends with every kind of legal instrument including a deed, lease, contract, will, articles of incorporation and co-partnership. He should learn trial practise, commencing with an opening statement, continuing with direct examination, introduction of evidence, cross-examination, redirect examination, stipulations (how to make them and their effect), summation, examination of prospective jurors and instructions to a jury, civil and criminal. He should have to make an appearance before at least one kind of administrative tribunal. He should be advised how to deal with adverse counsel, and how to deal with the court, during court sessions, in chambers and otherwise. He should have to take at least one deposition, and sit in while the client's deposition is being taken by opposing counsel. He should be well versed in the ethics of his profession.

He should have, during that third year, as many opportunities as possible to deal with a live flesh-and-blood client. He should learn how to get the facts, how to gain the confidence of his client, and how to recognize when his client is withholding the facts, how to help his client help himself instead of being his own worst enemy, how to conduct a detailed pre-trial conference with his

client, and how to fix a fee. There is nothing easy about learning any of these things, but how much worse off he will be when confronted with a completely strange situation.

In the matter of fixing a fee, one of/the outstanding examples that comes to mind is that of a young lawyer who had no idea at all of the value of his legal services, and was, moreover, sparring with a client who had had frequent dealings with lawyers. The lawyer, trembling, timidly suggested a fee of $75.00 for work he now recognizes was worth $150.00, but when the lawyer-wise client raised an experienced eyebrow, the timid lawyer suddenly blurted out: "Then $25.00---please?" Is this exaggerated? Not at all, it actually happened. Is it possible to exaggerate any of the experiences of the novice in the profession? Unfortunately, no.

If for some reason he runs out of flesh-and-blood clients during his third year, he should be presented with the imitation variety so that he will have the opportunity to carry through completely on common types of legal problems that are posed with these opening remarks from a client: "his car ran into mine", or "My tenant won't pay his rent", or "I want a divorce," or "My father died; he left a will (or he left no will)", or "Should I sign this contract", or "My ex-husband isn't paying his support for the children or my alimony" or "Should I put a homestead on my property?"

Let us remember that the public, in blind faith, fully expects that when a person has hung out his shingle and is thereby asking for clients, that he knows what to do if he gets one. Should that have to be a blind faith? Doesn't it point to the fatal defect

in our law school curriculum? Let us also remember that the client will judge, rightly or wrongly, that his lawyer is representative of his entire profession, and that if his lawyer is a nincompoop who lost his case through sheer lack of know-how, well then, all lawyers must be the same way. He's not likely to be impressed on patriotic occasions when the local bar associations point out that so many of our presidents of the United States were lawyers. He has had a personal experience, and you may be sure that the memory of it will stick with him a lot longer than will some item of American history.

This writer points with pride to the Duke University Law School where, under the inspired leadership of Professor John S. Bradway, the need for a third year internship has been recognized, AND SOMETHING IS BEING DONE ABOUT IT. At that school, a legal aid clinic is the proving ground for their senior students who, while learning the art of lawyering, are rendering a service to their community in Durham, North Carolina by providing free legal aid to indigents and a further service to the lawyers of that community for whom they prepare cases, exhibitis, briefs, etc. Other universities, including Northwestern, Harvard, Cornell, Cincinnati and Texas afford legal aid clinics but they are not a part of the required three-year course. The Legal Aid Society of New York provides an opportunity to the neophyte, because it is supported by local community funds and other sources, to earn something toward support while serving the clinic.

But it is the clinic at Duke University which has pointed the

way, which stands head and shoulders above all other so-called professional law schools, for here the graduate actually is what the others only pretend to be: a lawyer, ready to take his oath of service, and ready to render that service. How fortunate their clients will be as compared with the general public in other communities! And how fortunate those students are to learn the alphabet where it was meant to be learned: in school, not in court.

It is one thing to ask a court to be patient with the new practitioner, but it is entirely another thing to have the court look on while the advocate stammers and stutters, fumbles his papers and gets lock-jaw just in time for his examination in chief. Nothing is more shattering to one's self-confidence than to stand there, the eyes of your client, opposing counsel, the court, the attaches, the witnesses, the public, seemingly everyone in the world, looking right through you, waiting for your next word, your next act, and to know that you just don't know what to do or where to turn. Opposing counsel asks for a stipulation on certain evidence. Should you? Will you be stipulating away the basis of your own case? And the novice suddenly realizes that he doesn't even know the legal effect of his own act; he, who is entitled an attorney and counselor at law.

This criminal farce must end. And the lead must be taken by the national and state bar associations, in the closest cooperation with local bar associations to establish at every law school in their jurisdiction a compulsory third year curriculum patterned after that of Duke University in which there are three direct beneficiaries:

the indigents in need of legal aid, the lawyers in the community and the students who areactually learning to be lawyers; and there are two residuary legatees: the public at large and the profession of the law.

Time must not be lost. Those acts of progress and improvement which may be made in the future can only be in mitigation of the incalculable damage that has already been done and can never be undone. In changing the curriculum, let it be remembered by the bar and the law school, that this is not a charity matter; that the student is paying for his tuition and/or books, and that money has been earned in many cases by dint of sweat and sacrifice.

In any event, the law school which bears the mark of the approved Class A law school should be prepared to give the best available training for lawyering, and in so doing, it should not just look to its curriculum but also to its faculty. Particularly in the third year of clinic work, will the faculty be composed of philosophers or practitioners? Will the student be under the guidance of an instructor who took to teaching law on leaving his own advanced law studies and has never seen the inside of a courtroom himself, a man who never once has felt the boundless joy of hard-won victory, the fervent handclasp of a grateful client--forcing back the tears to say, "My dear sir, you can't know how much you've done for me. I've got the best lawyer in all the world!" A man who never once has sunk into the bottomless pit of misery called 'defeat', nor lived a thousand years in the endless hours of a jury's deliberations, nor himself been tried by fire in the crucible which holds within it

all the hopes, ambitions, achievements and disillusion of those who follow the law. It must be painfully apparent--He cannot teach what he does not know.

To say that there is much work to be done is to pose a masterpiece of understatement. To say that it should not be done is to make of each of us an accessory to the crime. To say that it must be done--and now-- is to mark another milestone in the history of legal education, in the progress of the noblest profession born of man.

Respectfully submitted by

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