Denver Law Review

Volume 47 | Issue 3 Article 6

January 1970

An Introduction to an Emperiment in Learning

James E. Wallace

An Introduction to an Emperiment in Learning

NOTES

AN INTRODUCTION TO AN EXPERIMENT IN LEARNING

ONE of the maxims which is indelibly impressed upon the mind of the American lawyer early during his professional career is that "lawsuits are won on the facts, not on the law." As a consequence, one of the first lessons which the fledgling lawyer must learn is to *get the facts*. To the extent that this maxim is true or pervasive within the legal profession today, it raises a curious dilemma and a seeming contradiction for the enterprise of legal education.

Contrary to the maxim, the structure of legal education in law schools tends to stress "getting the law" with seemingly little attention being given to "getting the facts." Traditional legal methods courses, which, insofar as course titles are concerned, constitute the attention given in law schools to the methodology of law, more often focus upon the mazes for finding the law within the four walls of a law library. The idea of "the common law" with its emphasis upon the historical development of law norms has influenced the design of the mechanics by which this development can be traced. Thus, the law student in his initial exposure to the task of lawyering must master the intricacies of citators, digests, reporter systems, indices and the like — devices by which the growth of the law can be charted step-by-step.

Yet, once the law library is no longer an obstacle to be overcome and the budding lawyer moves comfortably into and through its several resources, his systematic exposure and indoctrination into the methodology of the law ceases. To be sure, he must master the techniques of briefing a case; but this skill is learned or dismissed by the law student within the first year of the law school experience, that period of time within which legal methods courses are usually taught. Accordingly, the law student is too often left to his own devices to learn the methods of getting the facts and of understanding and evaluating those facts in relation to the law.

These introductory observations set the context for the following three student notes. They are experiments in learning to "get the facts" relative to a particular legal problem in order to gain understanding of that problem and the processes related to it. Substantively the studies deal with: (1) the functioning of the Colorado Judicial Qualifications Commission pursuant to the constitutional amendment and rules of

procedure which became effective in 1967; (2) the viability of the legal system as a means for change by Negroes in Denver; and (3) an analysis and comparison of the Colorado Commission on Civil Rights and the Federal Equal Employment Opportunities Commission. No comment need be made concerning the relevance of these matters for the contemporary legal scene, these being matters to which considerable attention is now being given from several quarters. But several facts which have bearing upon these studies as experiments in learning warrant particular mention so that the studies can be read in proper perspective.

First, these studies were completed by students in their *first* year of law study. In fact, at the time that these studies were undertaken, their authors had completed an introductory course dealing with the decision processes of the legal system and a course in the skills required to use the law library. They had completed the first part of two-part courses in contracts and torts and were beginning a course in basic property law. According to the usual standards of legal education, these students could be classified as neophytes with little grasp or equipment needed to tackle the more difficult intricacies of the law — a premise which may be questionable in view of their performances.

Second, these students were working under a very limited and tight time schedule. During the first week of January, they received assignments to conduct "an empirical study" of their own choosing as one of the requirements for a course on the legal profession in which they were enrolled. The completed reports of their research were due in final manuscript form six weeks later! This factor affected to varying extents the selection of social problems to be translated into legal problems for study, the definition of the problem once selected, the nonlibrary resources (including the expertise of the students themselves) which could be utilized, and the organization of the research task once all preliminary questions had been resolved. The students were required to match their resources with the bounds of time imposed by the divisions of the legal academic year and to define the scope of their studies accordingly. It may be, therefore, that some of the authors would have preferred a more comprehensive treatment of their subjects had they more freedom so to do.

Third, it should be noted that these studies were group efforts. In addition to the strictures upon time (or perhaps as a *result* of those time demands), these students were involved in the process of melding an *ad hoc* assemblage of individuals, who up until that time were relatively unknown to each other, into a working team. The metamorphosis of a crowd to a group in itself presents interesting problems. Yet, this change is essential to the educational process called "professional socialization." One dimension of a "profession" is the

sense of the group which the individual derives by being a member of and identifying with his professional peers in a common occupational calling. Further, although the image of the lawyer as the sole practitioner who is the jack-of-all-legal-trades is still very pervasive within the legal profession, the firm mode of law practice is becoming more and more common as lawyers form "groups" for their professional endeavors. However, the opportunities for group action in law schools are limited, the editorial staff of the law journal being the prime, and in many cases the sole, example for such group interaction. These studies became one such opportunity to experiment in a group endeavor. The finished products of these efforts do not reveal on their surfaces the tensions which oftentimes must be resolved to move people to decisions and to produce a single work product. By these studies, these students accomplished that goal.

There are other implications and ideas which can be derived from the fact of these studies. Suffice it to suggest that thereby some of our time honored assumptions about legal education stand in need of review and that the enterprise of legal education can learn from its students.

James E. Wallace
Professor of Law