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The Victims' Point of View

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THE VICTIMS' POINT OF VIEW

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I. PROFESSORS V. STUDENTS

In response to queries from incoming freshmen—"What is law school like?"—it has been remarked by graduating seniors that they were continually the objects of deadly assaults by the law professors: "In the first year they try to scare you to death. The second year they work you to death. And in the third year they bore you to death." Evidently the editors of this journal thought that the survivors of the battle between students and teachers should, in fairness, be represented so as to present "the victims' point of view." I must confess, however, that some of my remarks may suggest to my student comrades that I have been all along a spy from the other side. I can not in all honesty join in the steady chorus of derision from the students that the trouble with *legal* education is the teaching. A common refuge students take when they receive a low grade in a subject or on the bar examination is that the whole trouble was the professor—either he didn't cover everything, or he didn't make it interesting enough to work hard. Now my answer to the first complaint—that the professor didn't cover everything—is that the student should take it upon himself to study what isn't covered in class. Sometimes this isn't done because the student doesn't know there is a gap in his learning. Most casebooks cover the important areas in the law. The student, once he knows where the right books can be found, should not excuse himself for failure to delve deeply into these areas merely because the professor didn't spend time on them in class.

Of course, before a student can strike out on his own he must be informed of the existing treatises on the subject matter. Some students who want to read outside the casebook are frustrated because they don't know what to read. Many teachers in their emphasis on casebook law are so concerned with recommending that students not rely on hornbooks and outlines that they keep secret from the students the existence of good legal literature. Holmes' *The Common Law* could be recommended reading in many courses but seldom is. Freshmen should be required to read a few law review articles at the very beginning of their law school careers. The importance of outside reading references cannot be overstressed.

The other complaint I hear from students—that some professors don't make the s u b j e c t interesting — does not seem to me to be a valid reason for not doing well. As one philosopher said, "There are no uninteresting things in the world—only uninterested people." If the students do not have sufficient interest to learn the law, they have no reason to be in law school and should not become lawyers. Some legal subjects will be less exciting than others, but that is no excuse for not understanding these principles. It is helpful if a professor can make the subject interesting, and he should strive to do so, but I do not see how any moral blame can be attached to a professor who does not. Good lawyers are dependent

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upon themselves to acquire knowledge of the law, and law students should adopt the same attitude.

I am not saying that law professors are dispensable. There are two very important contributions they can and should make: (1) a critical sense, and (2) inspiration.

A. Critical Sense in the Law

A "critical sense" is the ability to take up a case and analyze it —what the rule of law is, what is only dictum, how the court makes use of or refuses to make use of precedent, and to criticize the holding or reasoning if possible. In a good opinion all subtle reasoning should be explored (a facet beginning students have a tendency to miss). It also helps for students to contemplate the policy behind the rule of law by having the professor change the facts to see if the legal principle should be qualified. The professor should not be the answer-man, rather he should be wise enough to ask the right questions. This is done to some extent of course by all teachers, but if I were to attempt to give any constructive criticism, I would say that less emphasis should be placed on trying to "cover the field" and more emphasis on tearing cases apart. I have gotten far more thinking done by being subjected to the socratic teacher-student inquisition than by listening to every case being briefed one after the other with little discussion. The students who have read the case don't require a windy rehash and those who haven't should not get it second hand. Here again, blame may be laid

on some students who are unwilling to be taught in this manner. There is often a desire on their part to know the law in order to pass the bar examination, rather than to acquire skills.[1] Law may be what the courts declare it to be, but a student should know more. He should be able to make a good case out of what he thinks the law should be.

In addition to analytical skills a student should be taught to use correct legal terminology, not to enable him "to sound like a lawyer," but because precise speech will aid in the elimination of cloudy thinking.

There is too much compartmentalization of law as it is taught. If a student taking Torts starts talking of *respondeat superior* as being based on the idea of agency (*i.e.*, an employer has given his employee the authority to commit a tort), he should be corrected immediately. Much harm may result if the teacher lets it go and thinks to himself. "Well, he'll be straightened out when he takes Agency." The student may never take Agency; even if he does, such erroneous concepts may become so well stablished in the student's mind that they will never be erased.

More use should be made of the *Restatement*. Unfortunately, teachers regard the *Restatement* as too abstract to be helpful. They insist that the common law is case law and that students will not see how law develops if they read crystallized statements of what someone thinks the law should be. Admittedly, the *Restatement* often sounds like a deaf man answering questions that no one has asked. The value in it that is overlooked is its consistent and almost scientific terminology. It was a help for me as a freshman taking Contracts, when finding courts talking about the "meeting of the minds," to translate this into the *Restatement* terms of "outward manifestations of assent," and an offer as "creating in the offeree a power to create a contract by acceptance." The *Restatement* should be recommended to students more often than it is in order to develop a sense of effective legal language (if nothing else). What I am suggesting is that professors might make an effort to blend their subject into the whole of the law by correcting their misuse of terms, even though the term is not directly involved in the course.

A student is never adequately exposed to legal history. I have already mentioned that most law students don't know of the existence of much good literature of the law. Many students are so hazy on legal history that they think that the King's Bench and the Queen's Bench are two different courts. A few outside reading assignments from *Plucknett* or *Radin* might do wonders.

B. Inspiration in the Law

The next important contribution professors of the law can make is inspiration. If a teacher can set an example of intellectual excellence, he can make the study of law a stimulating challenge. A student who has any personal pride will always work harder for a professor whom he feels has a deep love for and superior knowledge of the law.

1 These students can be identified by their incessant question, "Professor, what is the rule in our state on that?".

Perhaps a majority of students can never be inspired very much, but there are always some who are capable of having a burning determination to play an important part in formulating the rules by which men will be governed. Every great lawyer and great judge has given credit to some law professor who inspired him early in life to see greatness in the law.

II. LEGAL CRAFTS

The average student does not gain sufficient experience in using the law library. It is not enough to require students to take a course in legal research. One becomes adept in research only over a long period of time. If in every course there were a research paper required (not necessarily a long "term paper"), a student would soon learn how to use the library in an efficient manner in every subject area. The only students who seem to have any ability in using the resources of the library are usually the students on the law review staff.

As far as the other skills needed by a lawyer are concerned, I believe that practice courses such as Legal Aid and Municipal Court Practice are valuable in providing experience in handling actual cases. Although there is not much diversity in the type of cases handled, the experience of court appearances can instill the confidence and poise sorely needed in the first years of practice.

It has always been questioned whether law schools should provide more apprenticeship-type courses, such as courses in drafting and trial tactics. Whether formal courses on such topics are worth the trouble, I am not experienced enough in the practice of law to know. Experienced lawyers are not in agreement.[2] I have a suspicion, however, that such knowledge is best obtained from experience and can never be taught successfully in a classroom. Besides, law practice has become so specialized that it would be impossible to adequately cover every important field so that a graduate could expect to compete on an equal ground with veterans. Perhaps the main benefit of having apprenticeship courses would be to somewhat ease the feeling of panic a neophyte lawyer has when he handles his first cases.

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2 Compare Cantrall, *Law Schools and the Lawyers; Is Legal Education Doing Its Job?* 38 A.B.A.J. 907 (1952), with answers by Ritler in 39 A.B.A.J. 69 (1953) and McClain in 39 A.B.A.J. 120 (1953).

III. NON-LEGAL COURSES IN LAW SCHOOL?

The question has been raised as to whether law schools should put the teaching of law on broader grounds by bringing more sociological, economic, and medical studies into the curriculum. I believe that such a change is needed. It is true that three years is not really time enough to learn even the important legal subjects. (The best solution is to make law school a four year program.) Nevertheless, it is apparent that the case method of teaching is not adequate if a law student is to understand just how effective the law is in a rapidly changing society and where reforms in the law are and will be needed. The two new freshmen courses being offered this year at the University of Denver College of Law—"Man, Law and Society" and the three year program in "Professional Responsibility" (in which field work will be stressed)—appear to fill a long existing need in a law school curriculum. Most students spend so much time in their casebook study that they have little notion of the law as a living force in the world around them. They study all the definitions of crime, but seldom visit a penal institution; they hear of insanity, but never see a mental hospital; they know that law is practiced all about them, but delay participation in it until they are thrown into its midst at graduation.

One non-legal course highly regarded by the students is the course in the principles of accounting. A law school that does not require a course in accounting, either as a pre-law requisite to law school admission or as a remedial course, is blind to the facts of life. Nearly all lawyers encounter problems where an understanding of accounting principles is vital. It is difficult to see how a student without knowledge of accounting can take a course in corporation law and understand it. Nevertheless, some law schools have not dealt with this unfortunate deficiency.

IV. BAR EXAMINATIONS

Whether bar examinations are fair and adequate, whether they should be modified for the ease and convenience of the student (as by having the examination in three installments, one at the end of each year in law school), or whether they should be dispensed with altogether, has been debated for some time. I rarely hear, however, much comment on what I regard as its greatest value to the applicant-student as distinguished from its value to the bar as a means of weeding out undesirables. I am convinced that my legal education would have been incomplete without a bar examination. Its value lies in the fact that the applicant is forced to learn principles of law in the courses he did not have time to take, and to review the courses he did take. But "review" is not quite the right word because the process is one of "new" learning. One cannot step into the same river of law twice—neither the person nor the law is quite the same. To take an example, the course in Domestic Relations as it appears to a freshman contains much confusion, especially as to the issues of jurisdiction and conflicting state laws. After having had courses in conflict of laws and procedure, the graduating senior, in reviewing for the bar examination, sees and understands much he missed as a freshman. What

was once a blur is now brought into focus. A bar examination at the completion of the three years of study requires a student, for perhaps the only time in his career, to step back and examine the law as a whole rather than as a series of compartments as represented by individual courses and casebooks. This particular student believes that the bar examination is a worthwhile ordeal of much pedagogical value and should remain.

CONCLUSION

There is no dispute that law schools today bear a major responsibility in American legal education; so do they enjoy whatever opportunity there may be in the undertaking of its improvement. The legal profession, too, has substantial power in the premises, and by the same token shares the responsibility for the objectives, scope, content and technique of legal education. But it cannot be over-emphasized that learning, in the last analysis, depends upon the individual student's willingness to dive deep into the depths of the law; and that a life-long education is the price a man must pay to become a really complete lawyer.

It has been said:

> Costly apparatus and splendid cabinets have no magical power to make scholars. In all circumstances, as a man is, under God, the master of his own fortune, so is he the maker of her own mind. The creator has so constituted the human intellect that it can grow by its own action only; and by its own action it will certainly and necessarily grow. Every man must therefore, educate himself. His book and teacher are but helps; the work is his,[3]

3 Writings by Daniel Webster. Clark, *Great Sayings by Great Lawyers*, 754 (1945).