Lawyers As Writers

HARD-boiled lawyers by no means are entirely critical of present law teaching. Freely they admit great improvement over that of a generation ago. Especially do they find this in the greater ability of the students to read. Dr. Mortimer J. Adler, in his best seller, "How to Read a Book," says: "Until very recently, no one paid much attention to the even greater and more prevalent incompetence in reading, except, perhaps, the law professors who ever since the introduction of the case method of studying law, have realized that half the time in a law school must be spent in teaching the students how to read cases. They thought, however, that this burden rested peculiarly upon them, that there was something very special about reading cases. They did not realize that if college graduates had achieved skill in reading, the more specialized technique of reading cases could be acquired in much less than half the time now spent."

Lawyers recognize the truth of this statement that the case system has compelled its students to learn to read and further implicity at least endorse Dr. Adler's thought that the students should be taught to read before they enter law school. This is one reason why most outstanding lawyers so strongly believe in raising the standards of pre-law education. The other reasons, of course, are that no learning comes amiss to a lawyer and that a thorough grounding in literature, economics and history should be a condition precedent to the study of law.

The ability of the present-day graduate to read is not paralleled by his ability to write, though much of this criticism should perhaps be directed at his pre-law education. Regardless of where lies the fault, the result is regrettable, especially so as this should be the peculiar function of the schools. Men of extraordinary natural intelligence who are thrown into the practice of the law with little preparation quickly master the art of reading. Rarely do they acquire the art of writing. An involved style is the usual if not the natural characteristic of the law. Many years ago Justice Brewer attributed it to the then new fashion of dictating. It began, however, before the era of dictation and is still with us.

Paradoxical as it may seem, a simple and clear style is not a natural style in the sense that it comes easily. Contrariwise, it is an exceedingly artificial style in that it must be acquired by laborious effort. The *mot juste*, succinctness, clarity, precision of diction are not forward minxes. They succumb only to the most subtle wooing. Lady Mary Wortley Montague's daughter was not the only one who wrote a long letter because she did not have time to write a short one. All of us have known lawyers of great ability and surpassing acuteness of mind who had the capacity of grasping the most ingenious arguments, who, when they attempted to put their thoughts on paper, immediately became the slaves of verbosity. Pages of their briefs may be turned without a restful stop or even a fatigue relieving comma. Arid and exhaust-

ing, their sentences stretch like straight highways through the desert.

A great lawyer who suffered from this addiction was William G. Evarts. His defense was that only convicts should complain of long sentences.

We of the Bar have a right to expect more of the schools than they give in this. The law teachers, notwithstanding the affectation of some for strange, soul-filling words and weird nomenclature, are superior to the practitioners in the art of writing. The law review article is better written than the brief.

Recently this truth was forcibly impressed upon me. I had occasion to read the briefs in a case of national importance then pending in one of the United States Circuit Courts of Appeal. On the one side the brief was written by a practical lawyer of deservedly great reputation. It was stodgy, dull, and at least two sentences on every page ended with exclamation points. The brief for the other side was written by a former law teacher who has been severely criticized by the profession as an impractical theorist. It was written in lean and sinewy prose—succinctly and readably. My judgment was against the one-time professor and yet almost he persuaded me to be a Christian.

The lawyer's complaint is that only the star graduates of the law schools write prose instead of jargon.—By WALTER P. ARMSTRONG.

"WHILE the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision . A decision with absolutely nothing to support it is a nullity."—JUSTICE MORELAND, Edwards vs. McCoy, 22 Phil. 598.