SIGNIFICANT DEVELOPMENTS IN LEGAL EDUCATION IN THE UNITED STATES

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Legal education in the United States is undergoing some changes in emphases as it is in your country. For the first fifty or sixty years of our national life, lawyers to some extent were held suspect because they were identified with the British crown. This attitude continued even into the late 1850s to the beginning of the period of our civil war. Following the civil war in the 1870s the bar associations of the various states began to organize and to develop a sense of professional identity. There were schools with faculties of law that had been established at an earlier date, but it was not until the period of 1870s and 1880s that the faculties of the various universities, public and private, throughout the United States began to identify themselves as separate and autonomous entities offering a separate degree — the Bachelor of Laws.

Beginning about the turn of the century, the Association of American Law Schools was organized and began to promulgate standards, or criteria, of evaluation for membership in the Association so it became a kind of accrediting body. At the same time, the American Bar Association through its Section on Legal Education and Admissions to the Bar also became interested in upgrading the quality and standards and the performance of law schools so it concerned itself with approval of law schools. For a number of years, therefore, we have had the dual membership; that is, a school may be approved by the Section on Legal Education and Admissions to the Bar of the American Bar Association and may be a member of the Association of American law schools. The official accrediting agency under our Federal Department of Health, Education, and welfare is the ABA Section on Legal Education, rather than the Association of American Law Schools. The standards of the two organizations have varied somewhat so that all schools who may meet the standards of the Association of American Law Schools will also meet the standards of the American Bar Association. But the reverse is not so. There are about a hundred and sixty-five schools that have been approved by the American Bar Association, but there are only about a hundred and twenty that are members of the Association of American law schools. So the AALS has been a bit more elitist, a bit more exclusive in the promulgation and implementation of

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criteria of evaluation than has been the ABA. The two, however, collaborate in carrying on their re-inspection processes. For example, in this coming year SMU School of Law will be subject to a regularly recurring seven-year inspection. This will be carried out by a team of legal educators and practicing lawyers who will respond both to the Association of the American Law Schools and the American Bar Association.

In the period following World War I there began to evolve throughout the United States the notion of law as graduate study. The faculties of law had very generally accepted a five-year program: two for pre-law and three for law as the requirement for the Bachelor of Laws degree. That gradually changed throughout the United States into the three-three program — three years pre-law, three years of law school. And then especially during the period following World War II there developed a rush towards the establishment of law as graduate study leading to the Juris Doctor degree, with the prerequisite of four years of college work. This situation generally prevails throughout the United States at the present time although there is beginning to be some indication of a modification. Some schools, for example, Columbia University in New York, are making special arrangements with certain colleges to admit into the Columbia Law School excellent students following the completion of their third year in the Bachelor of Arts program. The first year of law school is credited towards the fourth year of the Bachelor of Arts degree. Thus, a student under this arrangement may obtain the Bachelor of Arts and Juris Doctor in six years.

The process by which we are accredited and inspected is not a governmental process. The Department of Health, Education, and Welfare acknowledges that the American Bar Association is the accrediting agency, and as a private agency it determines the standards of compliance and performance for purposes of approving schools so that accreditation and maintenance of standards is still a private matter within our legal educational system. Nevertheless, there are significant changes taking place in that particular sector. Within the past 18 to 24 months, the supreme courts of some of our states and some of the federal circuit courts have expressed a growing concern with respect to the lack of preparation of young men and women for service in the courts. There is a general feeling among some of the members of the courts that law students coming out of law school are not adequately prepared to do the proper representation of clients in court. Considering that we have had a number of constitutional cases in recent years which require that in criminal matters the defendants have the opportunity to be represented by counsel from the very outset of the charge against them, this means that we must have men and women of sophistication in dealing in criminal matters; and the courts have complained of young lawyers as not being capable of handling these matters

as effectively and competently as they should. The supreme courts of the various states and some of the federal circuits are formulating rules of practice pursuant to which a young man or woman would not be entitled to take the bar examination of the particular state or practice before the particular court unless he or she has taken certain courses in law school.

This has been resisted by the legal educational world because it has all kinds of complexities to it. Let me give you just an example. The Supreme Court of the State of Indiana has determined that a person must have certain courses in procedure and evidence to sit for the bar examination to be licensed to practice in the State of Indiana. A student who goes to Duke Law School in North Carolina or Yale Law School in New Haven, Connecticut, may be a resident of Indiana and return to Indiana to take the bar examination but he may not necessarily as part of his curriculum at Duke or at Yale have taken a particular course that the Supreme Court of Indiana requires. This puts into disarray the curricula of all law schools because one state is making this requirement. It tends to hamper and impede the free mobility of students from one state to another — a student in Indiana wishing to go to school at Michigan or Illinois would have to be particularly sensitive to Indiana rules in working out his curriculum at the particular school which he attends as if were at the State University of Indiana. This is a significant area of controversy in legal education at the present time.

With respect to the bar examination procedure, the young man or woman coming out of our law school with the Juris Doctor degree graduates usually in May or June and then immediately plunges into a very intensive preparation for a bar examination. The bar examination is designed to test the student on the technical knowledge of the law of the particular state. It cannot be said that it is in any way analogous to the kind of testing that goes on in law school where a more general, perhaps more theoretical, broad sphere of knowledge is required to be mastered in order to pass examinations in particular courses and eventually obtain the degree. The bar examination is more intensively technically specialized with respect to the student's knowledge of the specific rules of the particular jurisdiction, for example, Texas, Ohio, New York, Indiana, etc. In Texas, we find that the students who have completed SMU's program for the Juris Doctor degree, which is a broad, general education in law have really no difficulty in passing the bar examination. Our students' success rate is very high. A few may miss it the first time, but on taking the examination the second time, will almost surely pass.

In those states, however, which permit students who do not attend accredited schools to take the bar examination, the failure rate is quite high. Let me illustrate these differences in our state rules examination. The

Supreme Court of Texas has said to the young men and women of our state — "You must go to the equivalent of an ABA approved law school if you wish to take the bar examination in Texas." The State of California — "If you wish to try the examination, you do not have to attend an accredited law school. Show your residence in the state and take the bar examination." The result is that in California there may be fifteen to twenty unaccredited schools offering cram courses to prepare students for the bar examination. They are not part of a university system; they are part time programs often run for a profit. They charge fees, hand out materials, and review for the students materials to take the bar examination. Naturally, there will be a higher failure rate under these circumstances. The difference in requirements for examination vary throughout our fifty states. I have believed for sometime that Texas residents who would attend a law school in Texas might be given a waiver of the examination, or what is known as the diploma privilege. A few states still extend this, but very few, and Texas does not.

Post-graduate law study in the United States has been rapidly developing within our law schools. I have mentioned to you that the student completes four years of undergraduate study and three years of law studies to obtain the Juris Doctor degree. We are finding that more and more students are coming back to law school either on a part time or full time basis to obtain a Master of Laws degree. The complexity of regulation in our society is ever increasing, as I am sure it is in yours, so that a lawyer finds it difficult to keep up with particular areas of the law and the Master of Laws degree gives him the opportunity for intensive study in an area.

In the last two or three years we have also developed joint degree programs which are becoming popular in legal education. If a student finishes his Bachelor of Arts degree, and wants to obtain a Master of Business Administration degree and a Juris Doctor degree, such a program could take as long as five years beyond the four required for the Bachelor's degree. So, the law schools and the graduate schools of business administration have linked together a program in which the student does a combined Juris Doctor-MBA program in four years. This is an opportunity for the student preparing for business leadership or leadership in the law and business to combine the two skills in some excellent educational experience.

Another combined degree program that is becoming increasingly popular is the Juris Doctor-Master of Public Administration degree. We are finding in our society, as I am sure you are here, that throughout our system we need more skilled professioal who are capable of administering governmental units such as cities, counties, hospital districts, school districts, junior college districts, and the like. The Master of Public Adminis-

tration and Juris Doctor combination prepare the student for undertaking the responsibilities of this kind of governmental managership.

As to other developments we are emphasizing clinical education much more than we have previously. Clinical programs, externship and internship programs simulated interviewing, counseling, and trial experiences are being expanded throughout legal education. Students now prepare legal documents and appear in court under the supervision of a lawyer. We have in most of the states what we call the student practice rule. A student who has gone through half of his law school training may receive a student practice license to appear in court, file documents, and argue matters in trial. Just as the medical student works with the senior physician in the clinic we are doing the same sort of thing to a much greater extent than we ever did before in legal education.

Another area of more recent development is a concern about ethics. I think all of you are aware of the disgraceful disclosures of our so called Watergate investigation and the fact that most of the culprits were lawyers. The lay community charges us as members of the professional community with a lack of sense of ethics, an insensitivity to right and wrong, and point to the performance in the Watergate scandal as proof of this. I would argue about this point. When a lawyer is found doing something and he is convicted for it, that fact does not condemn the whole legal profession any more than if a doctor, or an insurance man, or a banker is found doing something wrong, that does not constitute a wholesale condemnation of those callings. Nevertheless, legal education and the legal profession in the past twelve to eighteen months have been highly sensitized to the need for development of some sense of professionalism and of greater emphasis on questions of right and wrong, morality and immorality. We have perhaps emphasized the technical competency too much and the concern for honesty, integrity has been too much for granted. Courses in legal ethics, lectures on legal ethics, problems that test the students capacity to determine when there is a serious conflict of interest are now much more apparent than they were before. The local bar associations have stepped up the activities of what we call our grievance committee procedures and many more people are being subject to reprimand, suspension or disbarment. If a lawyer is subject to discipline, he is entitled to proper hearing, and to bring forth his defenses and to be given proper due process. In Texas, if he was subjected to disbarment proceedings, he is entitled to a regular court trial.

Let me mention another significant development in our legal system. To an ever increasing extent lawyers in law offices are seeking the services of para professionals, as they are called, to assist in the performance of legal services. Medicine has done this very successfully for many, many

years. All of you know of the work of the registered nurse, the radiologist, and laboratory technicians who are not doctors but perform valuable and important supportive services for the medical profession. The young lawyer coming into the law office can no longer afford to be assigned to filing forms and doing menial tasks. We need para-legals who are capable of doing supportive work so that the young lawyer can move into positions of greater responsibility. Under the certification of the American Bar Association we are establishing in some colleges para-professional certificate programs. This is new, and it is subject to a good deal of emotional feeling. Lawyers get very wary about these innovations. Lawyers feel that unlike the doctor he cannot turn over something to somebody who is not a lawyer. Doctors are accustomed to doing this; lawyers are not.

Another development in the United States is the premiums for policies of pre-paid legal insurance. In Texas for the first time we have under the appropriate statutes started to sell legal insurance as one sells health insurance or medical insurance. If the policy holder has a legal matter he may call upon a lawyer to perform in accordance with a schedule of fees for the services. The purpose of legal insurance is to answer the need in our society of the middle class. The complaint has been made during recent years that the very rich can afford lawyers and the poor have lawyers provided for them by the state and national programs of legal aid which are really quite excellent. The middle class who are neither rich enough to afford a lawyer or poor enough to call on legal aid are left without representation. This is a source of substantial irritation within our society about lawyers generally. Therefore, prepaid legal insurance is available to assure the middle class of the same benefits for legal services that they have for health services.

We are also experiencing the use of cooperatives in various forms for the purchase of legal services. Lawyers do not like this result and have contested it in the courts but have lost. Labor unions and cooperatives may purchase the services of law firms to do the work for the membership. Lawyers have opposed this in principle because they feel that it denies the client that personal service which we have thought is characteristic of our work as representatives. Nevertheless, the exigencies of economics dictate that some changes have to be made, and in testing these matters, the courts have ruled in favor of such arrangements. We shall see an ever widening development in this area.

Another new matter that I would mention to you is advertising. The American Bar Association after much debate had approved certain limited professional advertising. You may now advertise your services as a lawyer under certain prescriptions with respect to advertising and this is subject to control by the bar association in the various states. This has caused

some older members of the profession a good deal of concern that the profession is moving too rapidly in the direction of becoming just a collection of tradespeople. Advertising somehow connotes a tradesman who sells his wares by putting signs out and advertising low cost services or merchandise. However, the new rules are strict and prescribe dignified professional advertising, which I think will work out all properly.