

BASIC TRAINING FOR LAW SCHOOL

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For as long as I can remember I have been asked what college studies a student who expects to go to law school should pursue. High-school and college students, their teachers and parents without number have written me and have come to see me in quest of an answer to this question. No doubt, all other law teachers who have served as deans have had similar experiences. And what have we advised? The ideal solution of the problem would require a relatively thorough consideration of the personality, ambitions, and resources of each student, together with knowledge of the faculty personnel and offerings of the college which the student expects to attend. In rare instances in which to some degree this opportunity has been offered, I have felt that my advice may have been of some value. But in most instances, the basis for any great degree of individualized advice is absent, and the best that can be done is to fall back on general formulas.

Law-school faculties and the Association of American Law Schools have been debating the problem for years. The Association has been able to agree upon a minimum quantitative requirement of college credits, with a fringe of non-cultural courses excluded. Many of the individual schools have gone further by requiring a larger number of credits—in some instances, a college degree. Some law faculties, in conjunction with their colleges, have developed rather highly restricted pre-legal college programs. Some others have simply given general advice as to the fields of study thought to give the most valuable preparation for the study of law. A small number of law schools have incorporated in their curricula studies normally found in college curricula and deemed necessary to a law student's training. The problem is a hard one to meet wholesale, and perhaps most schools are inclined either to rely on some quantitative standard, based upon the merits of general college preparation plus such methods and tests as can be devised for measuring the fitness of the individual student, or to admit and graduate practically everyone who applies, and pass the responsibility to bar examinations which continue the time-honored game of frightening everyone, crippling some, but keeping very, very few from receiving a license to practice law.

Most of the devices now in use are merely screens for admission and come too late to meet the main issue, *i.e.*, what studies a student should pursue in college in order to fit himself to enter law school and succeed after he is there. They have been successful in increasing the percentage of high-grade students in a few institutions; they have not been successful in keeping out of law school or out of the profession students whose training has not prepared them for the study of law. The schools which have prescribed pre-legal programs have at least sought to meet the problem head-on, though in some instances their programs have been more pretentious than meritorious. The difficulties of making such a program operative are great. Students come from many colleges which give no heed to the law school's prescribed program, and know nothing about its requirements until they are ready to enter

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law school. There is little standardization of college courses in content and none at all in teacher personnel. A prescription of courses in one college may be well suited for the purpose; the same prescription in another college may be otherwise. Even if these difficulties could be reconciled, the varying talents, tastes, and interests of students would make of uniformity a monstrosity unless the limits of selection were very wide. For the independent and talented undergraduate, there is nothing that so excites animosity as prescription. Prescription is best suited to the unimaginative student and the unimaginative teacher. It is enough to say that none of the attempts which have been made have advanced the solution of the problem very far.

If the problem is to be treated seriously it would seem that machinery must be devised for the purpose. It may be possible that it can be partially solved through administration. Assuming that the college is to be depended upon to give preparation adequate for law study, then it would seem desirable to enlist college teachers for the purpose of counseling students preparing for law from the time they enter college. No doubt a group could be found on every campus who would undertake such a function and who would be qualified for its execution. Such a group presumably would be chosen primarily from the teachers of social sciences, though not entirely so. If an institution has a law school on the campus, some members of the law faculty should be members of the counseling group. It should not be as difficult to set up the counselors as it is to determine what their advice should be. If this can be determined, then we should be on our way to a solution.

Whatever the advisory formula, it will be necessary to supplement it with written material to be placed in the students' hands. They can be incited to self help as well as to seek the counsel of college advisers. Some years ago I prepared several bulletins which had some bearing in this direction, and requests for them continued long after the supply of bulletins had been exhausted. If bulletins were prepared by competent persons for general distribution either by the Association directly or by its member schools, and their availability were made known to college advisers, no doubt many requests for them would be received. They would make the college-adviser plan much more widely known and the work of the advisers considerably less burdensome.

To be of the greatest value, advice must be based on what the student is preparing for, if he knows. One type of professional service may well call for basic preparation not required by some other type. The departures from a general norm would have to be left to the adviser. But there is a large area of common ground for all lawyers, and if it can be analyzed no doubt suggestions can be made which will be helpful to all students preparing for law study. It is easy to say, for example, that every student should own his own typewriter and know how to use it well. Every lawyer who has had the experience knows how greatly this adds to his convenience and how it increases the amount of work he is able to do. It is likewise easy to advise accounting, office management, and the like. Such things are almost indispensable in assisting a lawyer in his work, but they of themselves do not make a lawyer. The lawyer's powers lie deeper and require more exacting disciplines.

The burden rests on law schools to find an advisory formula, to convince college counsellors that it makes sense, and then to work with them to make the formula operative. It is believed the *first* step in the development of such

a formula will be to examine the functions lawyers perform; the *second* step, what powers lawyers must have to perform their functions; and the *third* step, what studies offered by the colleges best serve to develop the lawyer's powers to perform his functions.

I

To say in one breath with any accuracy what lawyers do is obviously impossible. They serve everybody in every type of activity. No single lawyer does this, but his basic training must be such that with some experience he can prepare himself to serve anyone in his community, state, or nation, or anyone else if the matter is to be determined by the law of his country. Clearly, the lawyer should be an expert in government. He has almost a monopoly in bringing to bear the power of government upon the affairs of his fellowmen. It cannot be expected that he will have at any time the need for all processes of government, or that he will be equipped at any time to make use of all such processes, but he must be able to equip himself promptly to utilize whatever protection the processes of government afford.

The lawyer serves clients big and small, individuals, groups, and government, in most of their important matters. He seldom knows all the ins and outs of any business, or other affair, but he must have basic training that will make it possible for him to understand his client's problem in a relatively short time, although it may ramify throughout a whole business institution and sometimes may involve related business institutions as well. Not infrequently a lawyer is required to know more about a client's business than the client himself; otherwise he may hurt instead of help his client. In as much as a lawyer's client may be government seeking to restrain business, or a business seeking to restrain action by government, or one business seeking the protection of government against some other business, he must understand both governmental and business processes, and have the power to focus the considerations which may determine restraint or protection, as the case may be. Obviously, any single lawyer serves on a narrow front, but the chances are that in the course of a lifetime he will be faced with some variation of most of the problems that other lawyers on other fronts are faced with. Whether his problems are large or small, the basic training required will for the most part be the same.

Thus it seems that a lawyer needs to know everything, and he does; but, more important for practical purposes, he must be able to learn anything and to bring it under his control promptly. In order to do this he must, of course, be able to utilize the services of many other people. In small affairs he will himself do most of the work required for his client's cause. In any complex affair, he will probably find it necessary to rely heavily upon the services of others. He may have to call in some other lawyer who is better equipped to deal with some aspect of his matter, or an accountant, statistician, chemist, physicist, engineer, physician, surgeon, real-estate expert, economist, financial expert, business man, labor expert, divine, agriculturist, or one or more of a score of other people who have special knowledge about the affair at hand. This requires that he should know enough to seek help; where and how to obtain it; how to deal intelligently with his consultants; how to draw from them what they have to contribute and to translate it so that a group of laymen, a judge, or other official can understand it; and then how

to fend off and clarify any confusion opposing counsel and his experts may introduce. In short, he must be able to translate into the clearest terms the special knowledge of himself and of his experts, so that a court, a board of directors, an official, or other persons who may have the power of judgment in the cause will understand and accept. The lawyer is thus a sort of "master of the show" who, in bringing to bear the processes of government or any other processes where the judgment of men is involved in composing the interests of others, can utilize the services of other men who know much more than he does himself.

II

What are the powers a lawyer must develop in order to perform these functions? Probably the most universal basic power a lawyer must have is the ability to read—ability to read accurately, understandingly, and rapidly. He probably spends more of his working life reading than doing any other one thing; with him cramming is a necessity. Reading is not a mere matter of recognizing words, phrases, sentences, paragraphs. Recognition of all of these is essential, but the meaning of the writer—the thought—is what the reader is seeking. Reading therefore implies much more than the eye sees.

The lawyer must also be able to analyze—to tear any complex of ideas, any statement of data, into bits; to break it down so that he may know what he has and especially what he does not have; to perceive what is explicit, what is implied, what is not. This is obviously one end of reading and the one the lawyer employs frequently. On the accuracy of his analysis of text, document, evidentiary data, reams or scraps of writing, the client's oral story or that of the witness, will depend his value to his clients and his professional success. This is the basis of the investigation so constantly required of the lawyer, and the level of the development of this power is best indicated by the ability to ask a question that goes to the heart of whatever the problem may be so that its insides are revealed. Power to read and analyze requires a high level of intellectual maturity.

The lawyer must be able to pass judgment on what his analysis discloses. Like goodness and sweetness, this faculty cannot be directly taught, but it can be built up as an incident of study, analysis, and action. The power to pass acceptable judgment is measured by the more objective power of synthesis—the power to put all the parts together so they make sense. Resourcefulness, imagination, creativeness, artistry are all imperative in successful synthesis, which focuses the point of the lawyer's judgment so that it carries conviction and ultimate agreement. Synthesis is complementary to analysis, but both are indispensable qualities of advocacy, the summation of the lawyer's powers. All this means of course that the lawyer must be able to talk and write. As he must analyze on penalty of faulty understanding, he must make himself understood on penalty of the loss of conviction and eventually of his client's cause. Statement is urgent at every turn: statement in opinion, in brief, in argument, in conference. It demands the highest art of expression. The effectiveness of thought is dependent upon its precision. The power of words is not exceeded by the power of the atom; but the trigger work that sets either off and limits it to its target is not easy to devise.

How can training in college and in law school be devised to cultivate these powers? Several observations need to be made quickly. Three years in

law school is a very short time. The student must come to law school with most of his powers well advanced. Where college and law school have done their work well, the product has been amazingly good. Where either has failed, the product is poor. Where both have failed, the product is wretched.

Further observation suggests that these powers are employed through the use of abstractions—concepts, ideas, hypotheses, formulas, and the like—which are the intellectual tools with which a lawyer must do his work. He attempts to control the world of affairs by the use of these instruments of thought, in which he has disciplined himself with such expertness that he has few competitors. Law in the most generally used sense is a highly formalized system of thought processes through which most of the conflicts of our social order are brought to judgment. Moreover, the settlements reached without their extensive employment are nevertheless due to the fact they are available. Much of the law work of the country seemingly consists of little more than what is represented by the paper and conference work of the lawyers. But the factual dispute is translated into the lawyer's formulas. Force backed by government is implicit, even though it seldom raises its finger. Advocacy in whatever form shapes the pattern. That the study of law follows a similar pattern, I do not stop to argue. The struggle of the student to make his vocabulary, his grammar, his logical sequence bring down his climactic hammerblow of reason is all too vivid in the lawyer's experience to require argument. The incomprehensibility of it all to any but the lawyer himself and the highly cultivated layman does not permit argument.

If law, therefore, is primarily a study and a use of abstractions, then the law student who comes from the college best prepared to use abstractions is likely to become the best law student. And, if this is true, then one step at least is indicated for improving the training a lawyer should receive in college.

III

Assuming these observations to be valid, what is there in college teaching that can be utilized to develop the student to a high degree of proficiency in this respect before he reaches a law school? As it is now, a student of native ability may fail in law school because this power is so weak when he enters that he cannot survive long enough to acquire it before his failure compels exclusion.

All studies are ultimately pushed into the domain of abstractions. But abstractions are found in their more general forms in the studies of language, literature, history, philosophy, economics, and government. These, it would seem, should be the primary fields of study for the student aspiring to become a lawyer. Here he gains the power to read, analyze, and synthesize, and the opportunity to practice judgment and expression by fashioning abstractions and hurling them at his fellows, as well as by defending himself from those hurled at him. The incidental skills of speech, composition, research, tabulation, organization, and logical attack and defense afford the exercises which build strength and precision in the use of these abstractions. This does not mean that abstractions are not also found in the fields of science. In fact they are as important there as elsewhere, but they are not so kindred in language at least to the everyday affairs of life. Obviously, every educated person must know something of science in a world so largely

dependent upon its instrumentalities and upon the activities of those who are devoted to the machines and processes of technology. The world of scientific thought can no longer be ignored by the lawyer. He must at least know enough to make use of the scientist. Perhaps, however, he will find most of what he needs of science in his direct fields of study and in more congenial form. For history, economics, and government are not strangers to the achievements of science or the advances of technology. In fact, their influence on the social order has made much of our history, has given business its impetus and government most of its problems.

Students thoroughly conditioned in the disciplines of any field of thought should have no difficulty in law school. Law faculties are able to advance well-disciplined students toward professional careers more rapidly and more efficiently. They can make excursions generally into problems which are closed to students who come with only a smattering scattered over the whole college curriculum. The more carefully disciplined student has every advantage. The gadget-minded student who has been subjected to nothing more than the mechanical routines of mass undergraduate processes will very quickly vanish from law schools when the other type of student becomes predominant.

I have often wondered where the able lawyers came from before our colleges and universities became so great in faculty, student power, and endowment. It is astonishing how many of them came from one-horse colleges, where the only non-curriculum activity was the Saturday-night debating society. Led by teachers who themselves were interested in developing the ideas of philosophy and government as they seemed to bear on current problems, the students of those feeble institutions of education were able to develop into lawyers with little aid from law schools, and to develop into leaders who, for sheer intellectual and spiritual power, make most of our modern lawyers and leaders seem dwarfed. For these powers the modern lawyer too frequently has had to substitute organization and technique; and these in themselves are not enough.

Who in our day can give the student who desires to study law the direction he should take; advise the studies he should pursue; assist him in selecting the personalities who can provide the impetus he must receive in the fields of learning basic to his legal training? Who can expand his horizons, encourage his efforts, refine his performances, so that his powers and ideals and basic character may grow to some maturity before he undertakes the exacting studies of his profession? Aside from his home influences, reliance for his development must be placed upon the student's high-school and college teachers, and, to make their efforts more productive for legal education, law teachers must seek an alliance with them. They all have a sufficient stake in the finished lawyer to require a closer coordination of their disciplines.

IV

One other phase of preparation should be discussed in this connection. It is an old theme that experience and maturity are important factors in legal training. It was formerly supported by limited observations. Some of these are that older men of everyday experience, well qualified intellectually, seemingly get more out of law school than their younger, less experienced fel-

low students. Negro students who have good abilities and good college training seem to suffer in law school because their environments do not give them the familiarity which other students have with most of the affairs which provide the daily grist of study in law school. Jewish students in many instances apparently can deal with abstractions much more readily than other students of similar college training—a capacity which can be accounted for only on the assumption that the philosophical teachings in their homes are richer than those found in most other homes. But the debate has been decisively closed in recent years by the records of hundreds of students who have returned from military service. The only question now is how the college men to come can be given some experience which will do for them what war did for the students now in school.

This is a hard question. Extended and well-directed college training will help some. An additional year or so of jobs would also help. But I doubt that the seriousness and understanding which have come from life-and-death responsibilities, marriage, parenthood, hardships of housing, and the incentive to get out and get under way while the going is good can be replaced by other available experiences. It is no longer debatable, however, that the young man who before he comes to law school gets the experience of living the life of everyday people in their struggle to make a living, who gains intimate insights into the thinking and reactions of people who will be his clients, will be a better law student and a better lawyer for his pains and patience.