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Gideon: A Challenging Opportunity for School and Bar

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GIDEON: A CHALLENGING OPPORTUNITY FOR SCHOOL AND BAR

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We print this article in an attempt to aid the practicing bar in solving innumerable problems which have been sharply brought to light by the Supreme Court's decision in the now famous *Gideon* decision. The main problem with which the author is concerned is the combining of the academic aspects of a legal education with the important practical training necessary for competency in the legal profession. This work is an attempt by the author to provide a practical solution to these increasing problems. We, the editors, hope that this article will arouse the legal profession to search for an adequate solution to the huge burden placed upon the bar by the Court.

INTRODUCTION

A FEW YEARS AGO at Stanford University Law School, Justice Robert Jackson voiced his concern as to whether the American law school adequately equipped its law students for work at the bar of the court. This concern has not been exclusive with the late Justice. It has been a point of issue between the legal practitioner and academician since the law school became predominant in the field of legal education.[1]

Many practicing attorneys have expressed troubled thoughts and impressions that in some way the law schools have failed and are continuing to fail to provide their students with the type of training essential in dealing with problems, clients, witnesses, fellow lawyers and judges. The voice of the critic has long been heard in the land. Charges of derelictions, delinquencies, and deficiencies have been hurled by both tongue and pen.[2] To question the sincerity and belittle the anxiety of the critics erects no barricade to the telling effectiveness of the criticism. Much of this activity is motivated by an awareness that any profession which neglects to solve its own failures, bathing itself in the waters of smug complacency, may soon find these failures corrected by alien and unfriendly hands. The contemporary society in which we live has shown an increasing disposition to demand of all the professions the highest competence and efficiency in the use of their privileges. Vested

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1. Cooper, *Preparation for the Bar*, 15 J. LEGAL ED. 300 (1963).

2. See Landman, *The Curriculum of the Law School*, 47 A.B.A.J. 156 (1961); Vanderbilt, *The Future of Legal Education*, 43 A.B.A.J. 207 (1957); Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952).

rights cannot be sustained in an atmosphere of public indifference.[3] Logic and wisdom therefore demand that responsible leadership anticipate the problems of those it undertakes to serve and take steps to remedy them before the reservoir of faith and confidence is drained dry and refilled with distrust and suspicion.

While the practicing bar has voiced its concern, the legal academician has too often evidenced an inclination to dismiss the whole thing as a neurotic and nostalgic longing for the "good old days" of the office trained lawyer who inhaled the law according to Blackstone from a musty tomb along with smoke from the pot-bellied stove in an office over the livery stable. Shades of Lincoln and Herndon still invoke an emotional reaction in the mind of many an elderly barrister whose memory of long hours and servitude wages has been sanctified by the healing balm of time.[4] To these legal academicians the teaching of law is to be done in the grand manner. The bread and butter skills are mean trade school concepts, and to waste valuable time teaching them is a prostitution of the fair lady of the law. The young graduate can quickly and incidentally pick up these simple skills while serving as a clerk in a law office or judicial chambers under the tutelage of members of the bench and bar who lack either time or ability to impart the fundamental critical and juristic skills that are the special dispensation of the academician.

Yet while the more sophisticated law teacher has tended to dismiss the carpings of the practitioner, legal academicians as a group have not been immune from what they consider an ill deserved attack by colleagues in other departments and divisions of the cloistered halls of ivy. The charge from this group has been made that the law school lacks a tradition of true research, and the frenetic activities of the law profession incased therein have little of the scholarly and scientific dedication characteristic of other academicians. Some have gone so far as to state crudely that the law teaching fraternity is a nest of anti-intellectualism and vocationalism.[5]

The breadth and scope of the concern expressed by Justice Jackson in preparing the law student for a place of competence in the legal profession is in itself a testimony to the sensitivity of the legal profession. While the dialogue has been sharp and vigorous, it most certainly has not degenerated into mere idle or vicious disputation. Nor is there a complete absence of progress. The cold war between scholar and practitioner shows perceptible signs of thawing. There are signs of an

3. Blaustein, *What Do Laymen Think of Lawyers,* 38 A.B.A.J. 39 (1952). The result as indicated by this article is "not pleasant reading for members of a profession that produced leaders like Coke, Marshall, Webster, Lincoln and Hughes."

4. DONALD, LINCOLN'S HERNDON (1948).

5. Jones, *Some Current Trends in Legal Research,* 15 J. LEGAL ED. 121 (1963).

awareness on both sides that law school and law office together are integral parts of a legal education.[6] Awareness of this fact is the beginning of wisdom and we see a sincere attempt by academician and practitioner to confront the problem mutually and work toward a solution, rejecting profitless castigations and recriminations. There are visible evidences of a new unity within the profession based upon trust and confidence and a feeling of responsibility to the public which it serves. While this may be a modest beginning, it is hoped that the embers of cooperation may eventually be fanned into a glowing flame. We see a growing maturity in contrast to the early days of the emergence of the law school as the incubator of the legal profession. The practitioner often washed his hands of the whole thing, abdicated the entire area of legal education to the academician and disclaimed any interest or responsibility for the student. Nor was the academician entirely unhappy with this attitude. Having recently achieved his status as the legal educator, he wished no encroachment and tended to view with suspicion and distrust any innovation suggested by the practicing bar.

THE FRESH APPROACH

Today, distrust and suspicion is a luxury the profession cannot afford. Both the practitioner and the academician must make their contribution in the training of the young lawyer. The law student must be properly equipped. How is this to be done? There must be an awareness of the continuity of the legal educational process. This is the whole "house of the law;" it cannot be compartmentalized. The attitude on the part of the law school that its responsibility is limited to a definite time period, that it has fulfilled its function when the doors swing shut on the coat tail of the graduate is a costly error. By the same token, the similar attitude of the practicing bar that it has no responsibility to the law student until he has graduated and has passed the bar examination is equally disastrous. The public deserves the competent lawyer. This means a great deal more than professional ability. We must frankly admit that in many cases the legal profession has not achieved professional stature sufficient to satisfy the public. Nor can the legal profession achieve this stature by a negative posture recommending injunction and other processes of litigation to stop the unauthorized practice of law. It is submitted that such action on the part of the organized bar, while necessary, does little more than irritate

6. Russell D. Niles, Dean of New York University School of Law, in a speech "Professor & Practitioner — an Unlimited Partnership" Ohio Legal Center Dedication Program. Other "straws in the wind" are Smith, *Law Students are Members of the Legal Profession*, 33 N.Y.S.B.J. 336 (1961); Samad, *Standards of Legal Education and the League of Ohio Law Schools*, 10 WESTERN RESERVE L. REV. 234 (1959).

the public and certainly creates little public esteem for the profession.[7] While the theory is that the public must be saved from itself, too often the public shows little understanding or appreciation of its saviors.

The growing awareness of the continuity of legal education is perhaps one of the most significant developments in the past decade. The realization that legal education is a "till death do us part" proposition has done more than anything else to dispel the non-existent gulf between law student and practitioner. The public which we profess to serve is not concerned with methods of training, but with results, and demands as a condition precedent to its confidence that the profession move with intelligence and dispatch to meet the needs of the society in which it has its being.

ABORTIVE ATTEMPTS

A review of schemes and plans of days past in which solutions have been proposed and disposed demonstrates the fact that the problems have not as yet been solved, or at least that no solution proposed to date has achieved unqualified success. Too often proposed plans have found themselves impaled on the distorted issue of proper division of labor and responsibility in the training of the young lawyer. Because of the new understanding, this should no longer be the problem it has been in the past. But in spite of the new look in cooperation and harmony the transition from student to practitioner is not an easy one, and there are some that still feel the gulf is as wide and insurmountable as it was between the rich man and Lazarus.[8] Dean Nicholson conceded some few years ago that the law schools were on the defensive for failing to do anything really effective to bridge the gap between legal education and legal practice. Unfortunately, he had only one despairing comment to make: "the transition from law in books to law in action is a drastic one,"[9] a comment which offers no cure or plan of action. There are those who suggest a bramble bush technique. This may have some advantages but it also poses some grave problems particularly with reference to the public detriment and its ultimate reflection on the legal profession. In all fairness it must be pointed out that there are some plus factors in the accelerated development

7. State Bar of Arizona v. Arizona Land Title & Trust, 90 Ariz. 76, 366 P.2d 1 (1961); *Opinion on rehearing*, 91 Ariz. 293, 371 P.2d 1020 (1962). The recent experience of Arizona saw the voters adopt a constitutional amendment which, in effect, permits real estate brokers to practice law on a limited scale. The amendment was adopted after the State Supreme Court had flatly rejected the broker's contention that they should be permitted to prepare the instruments and handle other legal details of selling and buying real estate. Here we have an example of the lack of public discernment on the part of the legal profession. The issue was, or rather became, not "stop unauthorized practice of the law," but "stop the lawyers."

8. Luke *16*: *20*.

9. Nicholson, MASS. BAR BULL., April, 1949.

of the young lawyer which often materializes under traumatic circumstances. However, the question remains whether society can afford or is willing to tolerate education so dearly acquired. The majority of the members of the legal profession, in the face of an articulate minority, have arrived at the consensus that the standard of professional competence necessary to properly represent and protect the public is not attained by the law student upon his graduation; that therefore some type of supervision or legal wet nurse should be provided him until he has achieved this competency.

As a result a rash of plans have been proposed, ranging from an internship concept to a special graduate do-it-yourself program. The only valid conclusion reached to date is that the voluntary program is ineffectual, and therefore a mandatory program is essential. More than that, it must be the joint enterprise of the legal academician and practitioner.

Perhaps the earliest plan developed for the post law school period is the so-called clerkship program.[10] Its purpose is to give the applicant a practical knowledge of the way in which problems of court and office are dealt with, and at the same time to indoctrinate him with a proper standard of ethical and professional conduct, instilled by daily contact with the older and experienced lawyer. Thus it was a simple matter of addition; practical training plus academic legal training equalled professional competency. There remain but five states which require law graduate participation in such a clerkship program. Superficially, the clerkship program has much to commend it. There exists a persuasive analogy to the medical internship program. The argument moves along familiar lines in that no thinking person would want a medical school graduate who had never observed an actual surgical operation to perform an emergency appendectomy. Yet we find the legal patient submitting to the crude inexperienced hand of the untrained law graduate. Whether this picture is quite as bleak as depicted is seriously questioned by Dean Griswold of Harvard who doubts that the suffering of the public at the hands of the young law graduate is really too serious.

Dean Russell Niles of New York University School of Law touches on an important factor in the successful operation of any type of intern-

10. Meiners, R.B.G., *Clerkship: A Legal Anachronism,* 64 DICK. L. REV. 31 (1959). The five states are Delaware, New Jersey, Pennsylvania, Rhode Island and Vermont. The duration varies from six to nine months. Of the five, New Jersey is the only one which requires that certain duties be embraced in the program. Also, any member of the bar who had been in practice for three years would be qualified to serve as a preceptor. The four remaining states require a six month clerkship with New Jersey requiring nine months. See also, The Report of the New Jersey Supreme Court's Committee on Training for the Practice of Law (1957); Harum, *Internship Re-examined,* 46 A.B.A.J. 713 (1960).

ship or preceptorial system. Like Arthur Vanderbilt's honest man in politics, it demands a preceptor willing to give more than he gets.[11]

An interesting suggestion has been proposed by Professor Neef of Wayne State University in a scheme that he describes as the "Provisional Licensing Plan."[12] Briefly stated, the plan calls for the acquisition of procedural and "how to do it" type material under an extensive continuing education program supervised by a special agency entrusted with the responsibility of conducting written examinations, keeping records, and conducting all relevant business management aspects of the program as well as determining program content and instructor recruitment. In essence the "provisional license plan" is a control factor in certifying professional competency. Professor Neef argues that such a plan has been successful in the medical internship program and in the provisional licensing of public school teachers in some states.

The Institute Plan proposed by a former Dean of the Michigan School of Law places in proper and realistic perspective the practicalities of the law school program.[13] He acknowledges the charges leveled against the law schools: their deficiency in instilling the practical skills, and knowledge of local laws and practice, the ivory tower characteristics of many of their professors, the fact that some of their courses may be outmoded. However he also looks with honest eyes at the law student who has three short years to acquire certain things: (1) a thorough familiarity with the basic rules of law in the fundamental legal subjects, (2) an understanding of the corpus juris, (3) a mastery of the fundamental processes of the common law methods, and (4) at least a start on the mastery of certain skills. Professor Stason recognizes the human limitations of the student, and that adding to the load expected of the law school means that in a trinity of years the student is asked to do the humanly impossible. In a society which is increasingly complex, no law school can be expected to deal with all these problems. To expect that the law school will by some strange alchemy transmute the raw and base material into a finished product of pure gold is not only unrealistic but dangerous.

Conceded that no more can be asked of the student, what is the solution as suggested by Stason? In substance his plan is similar to

11. Niles, *On the Preceptorial Duties of the Bar,* 10 N.Y.U. LAW CENTER BULL., Summer, 1962, p. 2.

12. The Law Schools Look Ahead, 1959 Conference on Legal Education, Arthur Neef, Dean, School of Law, Wayne State University, Topic 1-D, Continuing Education & Provisional License to Practice, p. 260.

13. Stason, *Legal Education: Postgraduate Internship,* 39 A.B.A.J. 463 (1953). It would appear that Professor Stason's plan indicates an approach worthy of the creative thinking of the legal profession and may be a significant contribution to meeting the challenge of Gideon.

that of Professor Neef in that every law graduate would submit to two bar examinations. Upon passing the initial examination, the student would be certified to practice under supervision with the right of appearance in stated courts. The second examination would be taken within a year or two and would cover local law and the "how to do it" type of material. Provision would be made insuring all graduates finding employment in law firms and legal departments of corporations sufficient time for preparation. An additional feature of the "Institute Plan" as suggested would be the establishment of a postgraduate division to act as a major service organization for the public in areas of legal aid, administration of lawyers' reference services, drafting of bills and ordinances, and memo and brief services to practicing attorneys.

One of the most interesting developments to date is the so-called "Georgetown Plan" which has been underway since 1960 and attempts to provide within the frame-work of the law school a practical combination of how-to-do-it and doing-it.[14] It avoids burdening the present three year curriculum leading to the LL.B. since it is handled as a graduate program of roughly one year in duration. It can be best characterized as an internship program under ideal circumstances both as to instruction and availability of opportunity for practical application. The goals attempted are achieved through a two-phase operation. An initial two and a half month orientation program carefully formulated and competently administered is directed primarily toward preparing the participants to represent defendants in criminal cases. The internees engage in an extensive review of the law of evidence, crimes, criminal procedure, and the practical and ethical problems facing defense counsel in criminal prosecutions. The remainder of the period is taken up with actual trial work defending indigents in the Washington, D.C. area. The program achieves two highly significant goals, namely providing practical training for the law graduate and meeting a social problem. In the writer's opinion, however, it contains two basic weaknesses: (1) the lack of the degree of cooperation between practitioner and academician in administering the program that is desirable in the "house of law," and (2) its limitation to the criminal law field.

Perhaps one of the most impressive plans is the so-called Ontario system which certainly demonstrates what is required in a serious effort to teach practice skills to all students before admission to the bar.[15] Here is demonstrated the fruits of the cooperative efforts of the academician and the practitioner. Upon graduating from a law school

14. Pyle, *The Georgetown Experiment*, 49 A.B.A.J. 554 (1960). Also see Editorial, p. 561.

15. Morton, *Academic Preparation — Osgoode Hall*, 14 J. LEGAL ED. 35 (1961); Roberts, *Ontario's New System of Legal Education*, MICH. ST. BAR J. (March 1959).

a two year program of practical training under the supervision of the Law Society of Canada is required. During the first year, the graduate is a clerk or in the office of a government legal department or corporate division with a member of the society. The second year is spent at the Law Society's teaching institution, the famous Osgoode Hall, where the graduate participates in a special professional training course complete with practical exercises including attendance at court. The depth and range of the course is indicative of the interest taken by the profession in the young lawyer-to-be of Ontario. Members of the teaching staff include not only practicing lawyers, but also judges, social service workers, police officers, psychiatrists and other specialists. Only after the graduate has completed the above clerkship and the Osgoode Hall training course is he entitled to be admitted to the Ontario bar. Perhaps the greatest contribution of the Ontario plan is the clear cut lines of responsibility of both the law school and the law society's teaching institution. The law teacher can shape the curriculum of the law school without concerning himself with crowding in the practical skills courses. The law institution training society can devote its time to the teaching of these skills in an atmosphere conducive to their successful mastery.

THE CHALLENGE IN GIDEON

John Dewey once observed that "while saints are engaged in introspection, burly sinners run the world."[16] Events have a tendency to create opportunities. Certainly, in this age of Space, events place demands upon the profession that must be met. A neglect of our housekeeping responsibilities may find the "house of law" being dusted out by unfriendly hands. No profession, including the law, can abdicate its responsibilities, and society is demonstrating an increasing impatience with those who look upon their profession as a tool of self aggrandizement. It is only the part of wisdom for leadership to anticipate the problems and anxieties of those it undertakes to serve and to remedy them before they grow into public grievances.

As a result of a Supreme Court decision involving a Florida indigent, the legal profession faces one of the greatest challenges, as well as one of the finest opportunities, in all its history. The result of this decision may have an impact in the legal arena reminiscent of the original Gideon whose propensity for light and stave created such havoc. The full implication of the *Gideon* decision may not be evident for some time although apparently the members of the Court have no doubt as to its revolutionary impact on the administration of justice.

16. Alburey Castell, *Open Questions in Philosophy,* Faculty Forum (February 1963).

Gideon v. Wainwright opens the floodgates to the demands of the indigent upon the time and attention of the American Bar. Justice Black, speaking for the majority, held that the Sixth Amendment to the Federal Constitution providing that in all criminal prosecutions the accused shall enjoy the right to assistance of counsel for his defense is made obligatory on the states by the Fourteenth Amendment, and that an indigent defendant in a criminal prosecution in a state court has the right to have counsel appointed for him.[17]

Every thoughtful member of the bar will reflect upon the responsibility which this decision imposes on the legal profession. It is imperative that the Bar make diligent efforts to discharge its responsibility, demanding new creative applications to create a climate of greater social concern. It cannot disregard or treat with calloused mind this challenge and opportunity. An image of unconcern on the part of both practitioner and academician, which unfortunately has been created by many of our police and traffic courts, has done much to color the attitude of the public toward the entire profession. We have visible daily manifestations of the hostile attitude too often engendered by the unimaginative and stereotyped handling of the average citizen by these courts. In the final analysis our system of government depends upon the public's respect for and obedience to the laws and courts of this land. We too often see respect change to annoyance and contempt, not without considerable justification when we observe the dismal picture of law and justice presented by the courts.

A significant finding recently released by the Missouri Bar relative to the public attitude gives food for considerable reflective thought. The results of a survey, two and a half years in preparation and believed to have the greatest depth and broadest coverage of any motivational study ever undertaken by a professional group, confront the legal profession with the hard cold facts of life.[18] This study reflects the basic distrust and suspicion manifested by the public in general toward the legal profession. It goes to the core of the attitude of the lawyer himself; his behavior in court, his public criticism of opposing counsel, judge and jury, and his failure to explain and articulate in intelligible terms the nature of the adversary system. Publicity concerning services, qualifications, ethical standards and public responsibilities is worthless so long as the lawyer in his personal contact with his clients fails to lay the groundwork for a better public image of the profession. It must be reiterated that for most of the public, the only courts ever seen in action are police and traffic courts. The result is not an image of

17. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963). See discussion in American Bar News, Vol. 8, No. 5, May 15, 1963.

18. American Bar News, Vol. 8, No. 6, June 15, 1963, p. 3.

fair intelligent leadership dispensing dignified, decorous and even-handed application and enforcement, but one of capricious, bored and impatient treatment due to the basic misapprehension of the courts that traffic offenders are criminals. More frequently they are responsible citizens, often harrassed and preoccupied, impatient with excessive delays, and resentful of fines too often imposed as revenue measures rather than traffic solutions. The result is that while the American lawyer must meet the realities of a society of vast and increasing complexity, he must attempt to do so in the engendered climate of public wariness of the law which substantially impairs his effectiveness and undermines his efforts to meet these awesome challenges.

THE OPPORTUNITY IN GIDEON

Because of the march of events the legal academician and the practitioner already conditioned to the new spirit of comradeship have an unparalleled opportunity to achieve a significant and creative solution to the two major problems confronting the legal profession; the training of the law graduate for professional competency, and the furnishing of necessary and adequate legal services to those members of the public within the submarginal economic framework. If "equal justice under law" is to be more than a hollow phrase, these two challenges must be met.[19] Here is the common ground upon which the traditional bifurcation between the activities of the law school and the activities of the practicing bar can be finally resolved. By meeting these two challenges the profession of the law will acknowledge the continuing process of legal education and will have done with the artficiality of compartmentalization. The law school must be viewed as an integral part of the law community. The graduate makes the transition from a learning posture to one that is predominately an application of the theoretical to the "stuff" of daily human relationships. The transition must be orderly, effective and aware of the two values that are to be served: legal competency and legal service to all in our society.

It is suggested that the law schools and the practicing bar jointly undertake a program which will achieve these two purposes.

THE TRANSITION PLAN

The plan as proposed would establish on a State-wide basis, under the common supervision of the Law Schools, the Practicing Bar and the Judiciary, a Law Practice Training Program, incorporated as a non-profit organization and administered by a Board of Directors composed of 12 members. Three members would be selected by the Law Schools, three by the State Bar Association, three by the State Judiciary, one

19. Erwin, *Defense of Indigents in Federal Courts,* 49 A.B.A.J. 435 (1963).

from the State Legal Aid Societies, one from the Continuing Education of the Bar, and one from the State Law Librarian Association.

As a prerequisite to admission to the Law Practice Training "Transition Program," a student must be a law school graduate with an LL.B. degree or its equivalent. The student must also have passed the State Bar Examination, whereupon a "provisional" or "interim" license to practice will be granted. Upon receipt of such a license, the graduate will register with the Director's office and make a decision to enter one of the three following programs: (1) an established law firm which has been duly certified by the Directors of the Program as competent and willing to participate in the program as outlined to insure thorough and adequate practical training for the stipulated period; (2) a government or corporate legal department which has been certified under the plan, or; (3) the Practicing Bar Institute, the specially organized training arm of the Law Practice Training Program, where a comprehensive orientation and practical curriculum handling criminal and civil areas will be given.

Upon certification by one of the three alternatives the graduate will be given a "Final Admissions Certificate to the Bar."

CURRICULUM OF THE BAR INSTITUTE

The curriculum will be basically designed to accomplish the purpose of practical training thus emancipating the law teacher from the impossible task of crowding more courses into the already dangerously loaded curriculum. In other words the emphasis will be placed upon special professional training including actual trial work, consultation and participation in preparing a defense for indigents under proper supervision, and assistance to indigents in civil matters similar to the present legal aid program.

The curriculum will be designed with two basic objectives: to insure that no one is permitted to enter private practice without having acquired the necessary proficiency in handling average cases in the basic fields of law, and to see to it that the student is prepared to handle the practical situations he will face when he enters private practice.

The subjects will be carefully selected by the Board of the Law Practice Training Program utilizing the excellent material now being prepared by the Continuing Education of the Bar Program in California.[20]

20. Stumpf, Comment, *Continuing Legal Education: The Need and the Reason*, 14 J. LEGAL ED. 240 (1961); Tweed, *Continuing Legal Education: New Conference to Chart Broader Goals*, 49 A.B.A.J. 470 (1963). An examination of the very practical and helpful material prepared by the California Continuing Education of the Bar would demonstrate the ease in which material of this nature could be used in the program as outlined.

METHOD OF INSTRUCTION

Instructors will employ a diversified technique — the lecture method, both live and recorded, debates, mock courts, interview of clients, opinions to be written, pleadings, drafting of contracts and other documents, examination and cross-examinations of witnesses, demonstration case in court work, and court sittings. Each student will be required to take part in every exercise, and all work will be re-evaluated.

The Law Practice Training Program will be divided into two primary divisions: the criminal division which will have the responsibility for providing legal aid to all indigents in local courts, and the civil division which will undertake much of the work now being done by the legal aid organization.

The Law Practice Training Program will be administered by a full time Director who would be responsible to the Board of Directors. All candidates for the "Final Admissions Certificate" will be required to complete the requirements spelled out by the "Program" within the three categories as stated above. Full time participation will be required.

The State-Wide Law Practice Training Program would do much to solve the lack of centralization which has left its imprint on the legal profession in America. It would create a more effective control over its members which in turn would create solidarity of outlook, a greater sense of ethics, and a closer compatibility among all members of the profession.

THE FACTOR OF LOCAL CONTROL

One objection that might be raised is the danger of over centralization. This can be avoided by the establishment of local Practice Training Programs under the broad supervision of the state agency, which would have the responsibility for the administration and implementation of the program in that particular area.

Under the administrative authority of the State-wide agency Practice Training Programs would be established in areas with a population center servicing city and adjacent areas of approximately a million people. Additional requirements would be the location of municipal, superior courts, state appellate court division, a federal district court, and one or more law schools in the area.

The local Board would be comprised of members selected by the local law schools, the local courts, a regional member of the state bar committee, county bar association, and local law library.

The curriculum as prepared and formulated by the State-wide committee would be adopted by the local group, and instructional

personnel from the local area would be utilized, including law teachers, lawyers, judges, and experts in various aspects of criminal and civil procedure. For example: the district attorney might discuss procedure and practice of courts, judges and attorneys, decorum and practice in courts, bondsmen, the practical facts of what bonds to set and so on; psychiatrists would discuss mental diseases, physicians, medical testimony, coroners' reports, and autopsies.

DIRECTOR OF LAW PRACTICE TRAINING PROGRAM

The responsibility of coordinating and formulating the program would be in the hands of a full-time administrator, a director responsible to the Board of Directors of the program, who would provide the necessary guidance and supervision to the individual directors of the local practice training programs. In other words, every effort would be made to achieve a uniformity in the program.

The local director (resident director) would adapt the policy and program to the local situation and work in conjunction with the local Board of Advisors.

ECONOMIC REALITIES OF LEGAL TRAINING

The Transition Program envisaged in the Law Practice Training Program adds one more year to the period of legal training and increases by that much the time required for qualification as a lawyer. This means that the prospective law student is confronted with four years of college leading to an undergraduate degree; three years of formal legal training for his first law degree (whether LL.B. or J.D.), a two to three month period of arduous preparation for the state bar examination, and upon his successful conquest of that obstacle, another year in a Law Practice Training Program before gaining his final certificate to practice. It is conceded that an additional financial burden is placed upon the student at a time when his previous years of academic pursuits may have strained his financial resources to the breaking point. Also it must be acknowledged that the increasing years often bring the added responsibilities of marriage and children. The question of primary concern is the impact on worthy candidates who may now be excluded from a career in law.

A realistic consideration of the financial problem should promote a satisfactory solution. It must be kept in mind that the program has a dual purpose, the providing of necessary legal services for the indigents in our society and the training of our graduates to be legally competent. In a program which can be utilized as a method of providing

these necessary legal services, both civil and criminal, compensation can be paid by the government on behalf of these indigents. For example, in cases involving federal courts, the federal government should allocate a stipulated amount to the defense of each indigent plus costs of any paper work, transcript of records, etc. While Congress has done nothing to allow compensation for lawyers or agencies representing the poor in federal cases, there exists considerable interest and pressure to correct this situation.[21] Certainly the program suggested would do much to encourage Congressional generosity and fairness on this point.

With reference to state indigents, legislation is being considered in the light of *Gideon v. Wainwright* to effectuate an equitable solution to the problem of compensation for legal services. For example, the California Legislature enacted an amendment to Penal Code, Section 987a, which was signed by Governor Brown in May and became effective September 20, 1963, to the general effect that any counsel appointed to defend an indigent criminal defendant, adult or minor, in a felony or misdemeanor case, shall receive reasonable compensation therefor, in an amount to be determined by the Court and to be paid by the County.[22]

In addition to federal and state compensation for the defense of indigents, a portion of the expenses and cost of the Law Practice Training Program could be underwritten by the local and State Bar Associations in terms of an annual assessment of a specific amount from each member of the bar. Certainly a $25 to $50 assessment would not be unreasonable.

A normal registration fee could be paid by all indigents similar to that required by the San Diego County Visiting Nurses Program[23] which calls for a small payment predicated on ability to pay and designed to avoid a feeling of complete charity on the part of the recipient. As a community service, the Community Chest might contribute a portion as it now does to the Legal Aid Program in San Diego.

21. Criminal Justice Act, the products of months of study by the Special Committee on Poverty and the Administration of Federal Criminal Justice, under the Chairmanship of Professor Francis A. Allen of the University of Michigan School of Law has been introduced in the House by Congressman Celler as H.R. 4816.

22. *Dicta.* San Diego County Bar Association News Letter, Vol. 10, p. 15 (1963). Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963), the Court, through Justice Douglas, ruled that an indigent defendant must have counsel to assist in his appeal from a conviction of felony. In California the Appellate Courts had previously assigned counsel upon the request of indigents, under certain circumstances. When such a request was made, the Court conducted an independent investigation to determine whether it would be of advantage to the defendant or helpful to the Court to have counsel appointed. Judge Griffin, Presiding Judge of the Fourth Appellate District states that as a result of this decision, the Appellate Courts of California have adopted the policy of appointing counsel for any defendant who files his affidavit of poverty. The minimum fee for such representation is $75.00; sometimes $100.00 or $125.00 is allowed.

23. San Diego County Visiting Nurses Ass'n. A minimal fee is charged for services performed by visiting nurses in the homes of the patients.

A further source of revenue would be a relatively small increase in filing fees throughout the state, the additional amount being allocated to this program.

The national administration has indicated an interest in a domestic peace corps program. The corps volunteers have been described by its chief sponsor, Senator Harrison A. Williams, Jr., of New Jersey, as "seedsmen of hope among the millions of Americans living in poverty, depravation and despair."[24] Certainly having the graduate law student under the supervision described in the Law Practice Training Program, would be a dramatic and effectual method for the legal profession to help our less fortunate citizens acquire that hope and reassurance necessary to a nation and its people committed to the ideals of justice and equality.

A careful evaluation of such a program, its relative economy, its utilization of the "book larnin" of the student in a climate of carefully supervised practical experience and know-how must show it would be a dramatic and effective instrument of social and economic policy.

CONCLUSION

There exists in the minds of the members of the American Bar the opinion that the Law Schools of the United States are not developing a product that is competent to practice law when admitted to the bar.[25] However there is an impression that perhaps this failure cannot and should not be ascribed to the law school as constituted today, the feeling perhaps that the law school is being asked to do something for which it has neither the time nor the particular qualification. As they approach one another in terms of mutual appreciation and awareness of the other's position, the legal practitioner and academician are beginning to see possibilities of solution.

The *Gideon* decision by the Supreme Court has imposed a severe test on the American Bar. The feeling that it can be met only by the establishment of adequate public defender systems by federal and state jurisdictions may provide an answer to the needs of the public, but does not provide an answer to the greater need of the public in terms of its right to expect competent legal services from all who stand before the bar of the nation.

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24. New York Times, p. 12, July 12, 1963.

25. The Conference of the British-Canadian-American Study on *Academic Preparation for the Practice of Law,* 14 J. LEGAL ED. 1–54 (1961), pointed a critical finger at both American and British legal developments with reference to striking a happy balance between the academic lawyer and the practitioner concluding that an ideal balance has not been achieved to date in these two countries; the implication being that the Canadians were the "pioneers of creative thinking in this area."

"Gideon's challenge" can become the legal profession's opportunity. By the adoption of the Transition Program as proposed with its flexibility in the alternative choices offered to all law graduates, whether in the supervised law firm atmosphere, the legal department of a corporation or government, or the Law Practice Training Program itself, both goals can be achieved.

It is conceded that there may be some disadvantages and that there will be those who will look upon the program as a step toward state and eventually national interference with the lives of the private citizen. There will be those who will discern in this plan another "Trojan horse" in which socialism makes further inroads, a paternalistic smothering of the individual self-reliance which gives to each the inalienable right to be represented by a competent individual of his own choice. The indigent is in some way identified with the fruits of his own misdeeds or inadequacies.

However, it is contended that these disadvantages, real or imaginary, are far outbalanced by the advantages. Such a program will enable the law schools to devote their time and attention to the academic; to an intensified inquiry into areas of jurisprudence, legal history and comparative law. The areas of legal writing, law review and moot court competition could be handled with greater efficiency and value than is now possible in most law schools. Furthermore, it would extract the venom of ill feeling between the practitioner and academician, bringing them into a more constructive relationship and vindicating to a large extent the feeling of many practitioners that the how-to-do-it courses are extremely important. It would not create a bridge between the practitioner and academician; rather it would eradicate the gulf by destroying all need for a bridge. The practitioner would see the continuity of the law and thus dispel the idea that the law student is separate and apart from the profession. It will also dispel the student's ill conceived notion that there is no correlation between theory and practice. It will give greater reality to the continuing education concept — the fact that while law may indeed be a jealous mistress she is by no means a temporary one. It will do much to build public confidence and develop an awareness that the legal profession is concerned and is sensitive to its social responsibilities.[26] The student can be instilled with professional ethics and responsibility in a way that is impossible today, in the atmosphere of professional "know-how" and in the reality of an existing problem. In the academic surroundings of a law school the ethical question, while interesting and

26. American Bar News, Vol. 8, No. 6, p. 8 (June 15, 1963); the Pren-Hall Foundation underwriting of the Missouri Bar Release on Bar-Public Attitudes; Wade F. Baker, Executive Director of the Missouri Bar.

even fascinating, cannot be faced within the context of an actual fact situation that is real to the law student. In the Training for Practice Program he can have the counsel of experienced and articulate practitioners of integrity who are sensitive to the experience he is encountering. The young participant is not forced to thread his way through the arena of contradictory forces in terrifying isolation; he may have seasoned guidance.

It is suggested that the program as outlined, while necessarily elementary, touches upon a solution that may be the next step in returning the legal profession to its proper perspective in the often bemused eyes of the general public which in the final analysis is its only rationale for existence.