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Editorials

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EDITORIALS

In this edition of the Kentucky Law Journal we have put in a new department to be known as the Forum. We believe that there is nothing so educative to the young lawyer or so beneficial to the profession in general as the discussion of the different problems of our social, political and economical life as they bear upon the legal profession. We invite a discussion by all members of the bar upon any question affecting our privileges and duties as lawyers. While we do not promise to give our editorial sanction to everything that may be said we do promise to give publicity to it.

Everywhere one goes he hears the same cry going up from discontented citizens that the prohibition laws are a failure. We do not feel like setting up our limited knowledge against such evident authority, but if we may be allowed to venture an opinion we believe the prohibition laws are rapidly proving successful. Of course all drinking has not stopped. Bottled in bond and "White Mule" find their way to the thirsty, that is to the thirsty who care more for their thirst than they do for the laws of their country. Such has been the case ever since July 1, 1919, and such will continue to be the case until the private citizen takes it upon himself to help enforce the laws. The law is no stronger than the majority of the citizens want it to be. If we want real prohibition we can have it by assisting the officers of the law in apprehending the violators.

If we may further venture an opinion we would like to class all those who say prohibition is a failure into two classes, or perhaps we had better make it three.

First, there is the class who have been robbed, as they see it, of their liberty to take a drink at any time, at any place and in utter disregard of the rights and sensibilities of others. This class realize best of all that prohibition is a living, moving being. Their object is to create sentiment against the law.

Second, there is that class who seeing here and there a man take a drink who before drank nothing intoxicating, throw up their hands in holy horror and immediately go forth in all the land and preach the doctrine of failure on the part of prohibition. They take no notice of the hundred who have been forced to stop drinking but can see only the one who now takes an occasional drink. This class feel no enmity toward the law. They cry aloud in ignorance.

Third, is that class of people who seek popular approval. There are two subdivisions of this class: Those who entertain on the vaudeville stage and those who do not. We can not remember now of having seen a vaudeville show since 1919 that did not take a rap at the prohibition laws before the last curtain fell. Off the vaudeville stage we find the entertainer at the corner drug store. Like the paid entertainer, at some time in his discourse he takes a knock at prohibition and all because it is quite the proper thing to do . . . that is, as he sees it. This third class of grumblers voice not their own discontent

but what they think is the discontent of their audience, and all for the sake of a laugh or two. It is not that they want a change back to the old order of things but that they seek appreciation for their efforts to entertain.

Prohibition has taken the cloak of romance from the moonshiner and has shown him to us in his true light. Long live prohibition.

STUDENT GOVERNMENT AT UNIVERSITY OF KENTUCKY.

For a great many years the feasibility of Student Government in the colleges and Universities has been agitating the educators in this country. England, of all other nations, has probably been foremost in the introduction of this form of administration in her schools and colleges. Gradually within the last few years student self-government has been adopted in many of the leading universities of the United States. This manner of government has been adopted here in our own University of Kentucky, and the question of whether or not it should be retained is of great importance, not only to the University and the students here, but to the state as well.

There are two convincing and important reasons for student government in the University. First, the moral value of the experience of self government; and, second, the preparation and training derived from it for future citizenship.

What gives such experiences their moral value? It is by genuine, willing help in the running of their own young community that the students learn the meaning of membership in a democracy. During the years when they are most open to the suggestion of certain fundamental requisites of group life, they get the opportunity to learn them by first hand experience. Of these demands, the most obvious, it seems to me, is respect for the law. I think we often fail to realize what an involuntary imposition of the school law means to the student body. The law of the school becomes less of this alien imposition, however, when he enjoys the chance as a school citizen to help frame the regulations which concern him.

The most significant value is the opportunity to meet what is perhaps the deepest demand of democracy—active, willing participa-

tion in the responsibilities of one's group. The University is a community with the problems of a community. It has certain functions to perform in its corporate capacity. It must mould character, it must teach, it must safeguard the health of its members. It must bring the weakest up to normal standards. It must encourage all to reach new and higher levels. These are the tasks of the community and they mean most for all concerned when, not the President or the Faculty alone; but when every student realizes that the University is actually such a community, and that to attain its end it needs his ready cooperation. Two convictions on the part of the student are essential—First, that there is a common aim uniting each to his fellows, and second that, in furtherance of this aim, each has a part to bear in the common responsibility. Wherever the systems of student cooperation have been tried long and patiently enough the testimony has accrued that they offer decided help to this end.

Such are the moral values of student government. It is worth the labor it costs for the opportunity it gives to drive home the lesson of group responsibility. Its effectiveness is due to the fact that it permits the working out of moral experiences instead of mere listening to discourses about them. There is a vast difference between knowing what is meant by sharing the obligations of your group and realizing them by practice. When for example the students discuss with the faculty the ethical issues involved in their elections, in the duties of officers, committees and citizens, in the disciplining of offenders, in the creation of public opinion, in reconciling conflicting loyalties of friendship for a delinquent, and duty to the university—in short, in a multitude of moral situations that arise, they are getting a moral and ethical instruction which strikes home and clarifies experiences in which they are interested.

And what of student government as a training for future citizenship? We believe that the students of a university by helping in the running of their own community, best learn the meaning of a membership in civic society. We believe that active, willing participation in the responsibilities of one's group is one of the most serious demands of a democracy. Under the old system, the autocratic system, it may be easy to secure the outward semblance of order, but this is not education for life in a democracy, and accordingly there must not

only be the community sense, but also some machinery to develop the executive energies of the democratic soul. That machinery is Student Government. Of course we may not expect that student government alone will make every future citizen competent, yet we contend that the value of such a training for future citizens of this Commonwealth cannot be estimated. That spirit of forbearance and cooperation makes not only for good citizenship but finally for world peace and for membership in that larger world civilization which most nations share, and from which no nation cultivating these principles need fear being outlawed.

The Indian poet and philosopher Tagore who has operated a school in India since 1902 with a system of self government has said:

“Whether educational institutions should turn out machines or just operators of machines is one of the grave problems of the world that needs immediate solution. I decided to found a school where the students could feel that there was a higher and nobler thing in life than practical efficiency.”

This state and nation need today a more thorough preparation for the future citizenship. Among the reconstructions awaiting our national life it needs no profound insight to reckon grave changes in the sphere of government. Grave questions lie in the future for solution. We need statesmanship of wisdom and training. Our civic tasks are already sufficiently complicated. The stupendous task of guiding the community life will call for citizenship more intelligent and alert, more conscientious than ever before. In the preparation of the men who are to take charge of those affairs we must utilize every force at our command. In this preparation student government in our schools and universities will be a great factor.

We have been told that America spells opportunity. Its grandest opportunity is to liberate character—democratic character, in both its immense staff of instructors and the millions of young men and women. No graver responsibility has ever rested upon our people than the test of our country to show that ethically democracy is not an idle dream—to help equip our sons and daughters in howsoever slight degree to bear their share in the responsibility is worth the effort and the most effective means is student government in our universities.

THE WASHINGTON CONFERENCE OF BAR ASSOCIATION DELEGATES

At a meeting of the Conference of Bar Association Delegates held in Washington, D. C., February 23 and 24, 1922, a special session on Legal Education was held to consider the recommendations made by the American Bar Association in regard to raising the standards for admission to the bar. The following resolution was read and carried by an overwhelming vote:

Resolved, That the National Conference of Bar Associations adopt the following statement in regard to legal education:

1. The great complexity of modern legal regulations requires for the proper performance of legal services lawyers of board general education and thorough legal training. The legal education which was fairly adequate under simpler economic conditions is inadequate today. It is the duty of the legal profession to strive to create and maintain standards of legal education and rules of admission to the bar which will protect the public both from incompetent legal advisers and from those who would disregard the obligations of professional service. This duty can best be performed by the organized efforts of bar associations.

2. We endorse with the following explanations the standards with respect to the admission to the Bar, adopted by the American Bar Association on September 1, 1921:

Every candidate for admission to the Bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It shall provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

3. Further, we believe that law schools should not be operated as commercial enterprises, and that the compensation of any officer or member of its teaching staff should not depend on the number of students or on the fees received.

4. We agree with the American Bar Association that graduation from a law school should not confer the right of admission to the Bar, and that every candidate should be subjected to an examination by public authority other than the authority of the law school of which he is a graduate.

5. Since the legal profession has to do with the administration of the law, and since public officials are chosen from its ranks more frequently than from the ranks of any other profession or business, it is essential that the legal profession should not become the monopoly of any economic class.

6. We endorse the American Bar Association's standards for admission to the Bar because we are convinced that no such monopoly will result from adopting them. In almost every part of the country a young man of small means can, by energy and perseverance, obtain the college and law-school education which the standards require. And we understand that in applying the rule requiring two years of study in a college, educational experience other than that acquired in an American college may, in proper cases, be accepted as satisfying the requirements of the rule, if equivalent to two years of college work.

7. We believe that the adoption of these standards will increase the efficiency and strengthen the character of those coming to the practice of law, and will therefore tend to improve greatly the administration of justice. We therefore urge the bar associations of the several states to draft rules of admission to the Bar carrying the standards into effect and to take such action as they may deem advisable to procure their adoption.

8. Whenever any state does not at present afford such educational opportunities to young men of small means to warrant the immediate adoption of the standards we urge the bar associations of

the state to encourage and help the establishment and maintenance of good law schools and colleges, so that the standards may become practicable as soon as possible.

9. We believe that adequate intellectual requirements for admission to the Bar will not only increase the efficiency of those admitted to practice but will also strengthen their moral character. But we are convinced that high ideals of professional duty must come chiefly from an understanding of the traditions and standards of the Bar through study of such traditions and standards and by the personal contact of law students with members of the Bar who are marked by real interest in younger men, a love of their profession and a keen appreciation of the importance of its best traditions. We realize the difficulty of creating this kind of personal contact, especially in large cities; nevertheless, we believe that much can be accomplished by the intelligent co-operation between committees of the Bar and law school faculties.

10. We therefore urge courts and bar associations to charge themselves with the duty of devising means for bringing law students in contact with members of the Bar from whom they will learn, by example and precept, that admission to the Bar is not a mere license to carry on a trade, but that it is an entrance into a profession with honorable traditions of service which they are bound to maintain.

THE FORUM

PUBLIC DEFENSE FOR THE ACCUSED

The whole object of our system of jurisprudence is to administer justice. It makes but little difference whether the verdict is for the prosecutor or the prosecuted so long as each party has a fair and impartial trial with a fair verdict. Yet the public seems to have overlooked this important object and have provided at public expense a prosecutor to prosecute the accused while the defendant whether innocent or guilty is left to himself to secure the best means possible for his defense. If he should be fortunate enough to have plenty of money or influential friends and relatives all will be well, but if he should be less fortunate in securing counsel the chances are against his being acquitted.

Is it not true that every person is innocent, in the eyes of the law, until proven guilty? Then no person by simply being accused should be forced to stand trial with an inadequate defense or to procure counsel for himself out of his own means. It is true that the court will provide a defense counsel for the accused, but it is a well known fact that in most cases this defense is little better than a farce. The counsel appointed by the court is usually a young inexperienced lawyer who very often takes the case against his own will. After several futile efforts to get a fee out of the client, he will then dispose of the case in the shortest manner possible. If the prisoner cannot be induced to plead guilty he is nevertheless doomed for very little preparation is given the case. The result is an occasional conviction of an innocent person, and very often an imposition of a sentence much out of proportion to the offense.

In some instances this inadequate defense works an injustice to the public. The hardened criminal will learn to plead guilty and receive a light sentence by thus throwing himself upon the mercy of the court, while a first offender for the same offense, who stands trial, will get a longer sentence. No person should feel that he is placing his interest in jeopardy by standing a trial.

I believe a remedy for the above mentioned evils would be to provide at public expense a counsel for the accused to be equal in ability to the prosecutor, and chosen in the same manner. The theory of public defense is by no means a new suggestion. In Rome the tribunes were authorized to take the defense of the accused in criminal proceedings. Under the papal government of Rome according to Browning, there existed another official with similar duties but under the name of "Pomperus procurator." E. Ferrio tells us that in Piedmont and Naples there once existed an official known as the "Advocate of the poor" who took all of the undefended cases. He says also that such an official still exists in Alexander in Piedmont. Historians tell us that defense provided at the expense of the public has always been more effective than gratuitous defense.

No lawyer who respects the standard of his profession should object to such a system, for as Mr. Parmalee in his discussion of this subject points out, the result will be to prevent the exploiting of notorious cases by both the prosecution and the defense who in an ef-

fort to gain notoriety for themselves advertise, widely, cases that should be kept as nearly as possible from the public. It might aid in eliminating the disreputable lawyer known as the "shyster," and at the same time preserve a practice for the reputable lawyer, for the accused would still have the right to employ counsel to assist the public defender.

This system would not materially increase the public cost of a trial for in many courts we already have probation officers who investigate the case after the prisoner has plead guilty or has been found guilty, and recommends to the judge the best method of disposing of the case. This information could be collected by the public prosecutor before the conviction and given to the jury so that it might have all the possible evidence in the case.

J. B. WATKINS.

A TWO YEAR TERM FOR GOVERNOR

With the passing of the recent session of the legislature there has developed the usual amount of comments as to its accomplishments and failures. Force of habit probably leads the majority to deplore failures rather than to commend that which is favorable. According to old observers this legislature was probably neither above nor below par when judged by Kentucky standards. In other words this was an average session with average results.

The line of cleavage, however, between the executive and the legislature was very pronounced and the constant bickering and "tit for tat" attitude leads disinterested observers to doubt the wisdom of a system which gives rise to a situation where the legislature is of one political complexion and the executive of another. With the two political parties as evenly divided as they are, Kentucky will, in all probability, witness many repetitions of this deplorable situation. So pronounced was the difference of feeling, the executive veto was applied to forty-five bills which had been passed by the legislature and as a consequence a very large portion of the work and energy of the legislative body accomplished nothing.

The only remedy for this apparent defect is the amending of the constitution so as to provide for the election of the legislature every

four years to coincide with the election of the Governor, or to elect the Governor every two years to fit in with the legislature. The last named is the more acceptable since such a system is in operation in twenty-four American Commonwealths and is working with obvious satisfaction. The States having the system herein advocated are:

Arizona, Arkansas, Colorado, Connecticut, Georgia, Idaho, Iowa, Kansas, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, and Wisconsin.

A similar system exists in Massachusetts only the election occurs every year instead of every two years. With the exception of New Jersey, which elects a Governor every three years, the other States of the Union elect every four years, but the difficulty which exists in Kentucky does not appear in the majority of the "four year" States since they are so predominantly of one political inclination that the possibility of a difference between the legislative branches and the executive in regard to political complexion is extremely remote. For instance, Florida, Louisiana, Mississippi, North Carolina and Virginia are overwhelmingly Democratic and such States as Illinois, California, Delaware, Indiana, Washington, Oregon and Pennsylvania are safely Republican and consequently are not inconvenienced by the system which prevails in this State.

By electing the Governor and the legislature at the same time we are practically assured of having them of the same political faith, and in addition each session of the legislature would be a "Platform" session with definite party promises and pledges as guide posts to its actions. This within itself would tend to elevate legislative activity, since it is a notorious observation that our "off-year" sessions do not measure up to our "platform" sessions in real accomplishments.

In case this amendment should be adopted it would be wise to remove the restriction preventing the Governor from succeeding himself—a provision, the wisdom of which is doubtful even under the present system.

Real progress can come only through closest co-operation between the two branches of the State government and under this new system we need no longer fear a repetition of the flagrant waste of effort such as occurred in the recent session of our State legislature.

RAYMOND T. JOHNSON.