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## Forum Juridicum

### THE LAW SCHOOL IN A CHANGING SOCIETY\*

A. E. Papale\*\*

Each year literally tons of mail flow across the desk of every law dean in this country. Some of it is material dealing with the past, present, and future of legal education. During periods of social stability the amount of this material is negligible. During periods of social unrest or social change it increases to sizable proportions. Faced with a presently changing society, both the bar and students alike should acquaint themselves with what the experts are saying today and with what is taking place at some of the law schools.

#### I. WHAT THE EXPERTS ARE SAYING

The report of the 1968 Committee on Curriculum of the Association of American Law Schools contains the following provocative statement:

" . . . [T]he Committee has come to believe that legal education is in a crisis and that fundamental changes must be made soon. It is not only that law students over the country are reaching the point of open revolt but also that law faculties themselves, particularly the younger members, share with the students the view that legal education is too rigid, too uniform, too narrow, too repetitious and too long. In addition, law schools have not faced the consequences of the fact that the profession is rapidly becoming specialized, a fact that has important implications for the law schools' training mission, not only in the three years of formal law study but also thereafter. Finally, though less urgent a demand, the need for highly professional lawyers and the lack of an adequate supply raises the question of increased reliance by the profession on para-professional (sometimes called sub-professional) personnel to perform less demanding tasks now undertaken by licensed attorneys."<sup>1</sup>

The Committee proceeds with a diagnosis of each of these

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\* Adapted from the speech made by Dean Papale on his induction as Honorary Member of the Louisiana Chapter of The Order of the Coif.

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1. AALS PROCEEDINGS, Part 1, § II, at 7 (1968).

complaints. This diagnosis must be read in its entirety to fully appreciate the respective bases of the complaints. Note, however, should be taken of the fact that the members of the Committee did not file an agreed report and that the report drafted by the Chairman is printed in his report. Nevertheless, some of the proposals deserve serious consideration and some law schools might do well to experiment with some, if not all, of them.<sup>2</sup>

William T. Gossett, President of the American Bar Association, strikes a responsive chord<sup>3</sup> in answer to the question, "What should the function be of tomorrow's continuing legal education in order to help tomorrow's lawyers make meaningful and enduring contributions to society?" He says that "social ferment is bringing about significant changes in the outlook of legal educators and law students and is reforming law school curricula. Some of this ferment is prompting law schools to explore new forms of postadmission legal education programs, such as those for specialized training of young lawyers to qualify them to render needed and long-neglected legal services to selected sectors of society."<sup>4</sup>

In his recent address to the members of the Louisiana State Bar Association, Bernard G. Segal, President-Elect of the American Bar Association, pleaded for the education of paraprofessionals or sub-professionals, as has been done for years in the medical profession, to alleviate the burden of licensed attorneys who are in short demand. As a first step in this direction, the American Bar Association's Section on Judicial Administration has endorsed a Proposed Model Rule Relative to Legal Assistance by Law Students.<sup>5</sup>

Finally, while many others have spoken and written on the subject of legal education in these changing times, it is well to heed the words of Dean John B. McKay of the New York University School of Law who says, "we lawyers like to think of ourselves as part of the 'establishment.' And so perhaps we are. But we should avoid the complacency commonly associated

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2. In the meantime law schools will look forward to the completion of a study of law curricula commissioned by the Association of American Law Schools and supported by a Ford Foundation grant. This project will without doubt consider "ways in which legal education might be adapted to the changing times." *Prof. Carrington Directs Study of Law Curriculums*, 13 LAW QUADRANGLE NOTES 2 (1969).

3. *The Future of Continuing Legal Education*, 55 A.B.A.J. 132 (1969).

4. *Id.* at 132.

5. Letter, dated March 18, 1969, and copy of this rule are on file in the Louisiana Law Review offices.

with an establishment position, following instead the example of the lawyers who helped frame the Declaration of Independence and the Constitution of the United States. The present may be a period that is intellectually no less revolutionary than the late eighteenth century. The legal profession, including legal education as we have come to know it, may be on the threshold of more abrupt changes than during any previous period of American history.

"It is not merely that this is a turbulent time in American society generally. The legal profession and the law schools have survived other periods of social upheaval with a modest adjustment. Today the significant fact is less the rate of change than the quality of change that is clearly visible to those who wish to look."<sup>6</sup>

Dean McKay goes on to point out other signs of future changes in legal education: student participation in decision making, legal education and social policy, the response of legal education, and the redefining function in law schools. He concludes "that the future strength of legal education in the United States lies in a redefinition of function in at least the following areas: reorganization of curriculum; experimentation with teaching methods; expanded clinical programs; and increased attention to interdisciplinary training."<sup>7</sup>

## II. WHAT THE LAW SCHOOLS ARE DOING

In addition to the programs mentioned above, many law schools with or without foundation grants have added courses and promoted projects which hopefully will improve conditions and help cure some, if not all, of the ills of present-day society.

As an example of the way curricula are being substantially enlarged, the Cornell University School of Law made the following courses available to upperclassmen during the academic year 1968-1969: Civil Rights and Civil Disobedience, Computer Science and the Law, Consumer Protection, Continental Law of Family and Successions, Emerging Nations: Legal Problems in English Speaking Africa, Land Use Planning, Law and Poverty, Problems in Law and Psychiatry, Problems of Urban Development, Remedies, Tort Problems, Social and Economic Aspects of Family Law.

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6. McKay, *Legal Education: It Is Later than You Think*, 52 J. AM. JUD. SOC. 272 (1969).

7. *Id.* at 275.

In the words of Dean William Ray Forrester, dean of that school and formerly dean of the Tulane University School of Law, "for the most part, these subjects reflect areas of activity and interest which are developing in American society, areas in which young people, particularly, are strongly concerned. It should be noted, however, that even though these many additional electives will now be available to the members of the second and third year classes, the program of required courses has been retained. The result, it is expected, will be that the students will continue to receive the customary fundamental training in traditional subject matter and at the same time will have a choice of subjects which are regarded as more immediately related to current societal problems and which are responsive to student enthusiasm. This enthusiasm can be a decided stimulant in law study, and the Law School should take advantage of it.

"The changes which have been made this year are certainly not regarded as the last word. The curriculum should be flexible, adaptive and responsive to the needs and sound interests of law students and the society they serve."<sup>8</sup>

A study on the improvement of the legal curriculum made possible by a grant from the United States Office of Education is still in progress at the University of Denver College of Law:

"The first year curriculum should be composed of required courses. In the second and third years the students should be required to fulfill area requirements by taking a minimum of courses in specified areas and a minimum of hours in fields of concentration."<sup>9</sup> The required courses mentioned are those usually required or at least offered in most law schools. For areas of concentration, courses in Natural Resources, Estate Planning, Commercial Law, Criminal Law, International Law and Sociology of Law are suggested.

The Russell Sage Foundation "is currently supporting seven university based programs for training and research in law," the common objective of each is "the application of social science skills to problems of law and legal institutions."

The first of these foundation-supported programs was launched at the University of Denver about four years ago.

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8. Dean's Report, Cornell Law School (1967-68).

9. Dean's Report, University of Denver College of Law (1967-68).

"The degree to which the work of social scientists has been brought into the College of Law and made a part of the daily process of legal education is still unique."<sup>10</sup> Initially the program was established by Robert B. Yegge, Dean of the College of Law, in 1963, operating under the title of "the Administration of Justice Program." More than a dozen special courses are offered by social scientists, lawyers, and laymen under joint degree programs directed by faculty members. Advanced law students participate in the clinical and research activities of each program.

But a word of caution is necessary relating to changes in curricula because some of them go beyond the interest of the common good or what is best for society. Oftentimes such changes result from inter-faculty trade-offs and similar forces in this academic business of ours that are only remotely related to law.<sup>11</sup>

### III. WHAT THE LAW STUDENTS ARE DOING

The law student of today is on the march. He is not satisfied, as was his predecessor, with a thorough presentation and study of the basic law of traditional core courses. He wants to be involved almost immediately in the business of being a lawyer. He is restless with the Socratic method of teaching, at least after the first year. Some with and some without compensation want to do what licensed lawyers are doing. In other words, they want more and more clinical experience and less and less of the classroom discussion of leading cases and the rational basis or theory upon which these cases are decided.

As a result, law students today are anxious to obtain the privilege of representing clients in courts of law without the presence of a supervising lawyer. In some states this is already permissible. In *Johnson v. Avery*,<sup>12</sup> a case referred to as the "jail house lawyer" case, the Supreme Court of the United States has approved of the idea of permitting law students to advise and assist illiterate or otherwise incapacitated inmates of state penal institutions with regard to post-sentencing procedures, including habeas corpus. In many states students interview and represent indigent clients under the supervision of a lawyer, either in a

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10. Russell Sage Foundation, Annual Report (1967-68). For a good summary of the projects, see *id.* at 40.

11. Davis, *That Balky Law Curriculum*, 29 J. LEGAL ED. 300 (1969).

12. 89 S. Ct. 747 (1969).

law school operated legal aid clinic or in neighborhood legal services to the poor offices funded by the Office of Economic Opportunity. Courses in advocacy, trial practice, and moot court are popular when geared to what lawyers do and when students are the actors and not just listeners. Law schools on their own initiative or through student pressure will establish or expand programs providing clinical experience to students in the practice of law.<sup>13</sup>

In New Orleans and Baton Rouge law students participate in a Release on Recognizance Program which provides information to aid criminal court judges in deciding whether to release an indigent on his own recognizance or to require him to post a bond. The students question prisoners regarding their criminal records, permanence of residence, family ties, employment history and availability for contact by the ROR. The information is verified, evaluated, and presented to the presiding magistrate along with a recommendation for release in those cases which merit it. Literally thousands of prisoners have been interviewed since the program began in February 1968. A few law students are employed each year by the district attorneys' offices where they serve as investigators and learn a great deal about the procedures and operation of those offices.

#### IV. WHAT ARE THE LAW SCHOOLS DOING TO PRESERVE WESTERN CIVILIZATION

Social ferment, social upheaval, social change, social revolution, call it what you will, is not new in American history. Changes have occurred before and will continue to occur. Tort law responded to the railroad and the automobile. Administrative law, labor law, and other specialties grew out of the changes brought about by the New Deal. Today, in response to the New Frontier and the Great Society, urban problems, welfare law, and other current subjects of interest are receiving attention. The legal profession and the law schools are accustomed to this and are equal to the task of adjusting to changing times. The only danger is that without a sufficient response by the bar and the law schools, the changes will outpace the law.

Improvements must be made under the rule of law. It is the rule of law which guards our freedoms and protects our basic

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13. 20 U.S.C. subch. X, § 1136 (*Law School Clinical Experience Programs*) (1969).

democratic institutions. It is the rule of law which distinguishes our society, our Judaeo-Christian civilization, from the totalitarian systems that operate under the guise of Communism.

But with the increasing secularization of our society and the decline in the moral glue furnished by religion, there must be a compensatory emphasis upon ethics and morality in legal education. The primacy of law must be emphasized as a first principle of professional ethics. New courses with ethical and moral content must be developed to meet this need. This is the task before the American Bar Association and the law schools of this country. With God's help they can succeed.