

THE PLACEMENT AND APPRENTICESHIP OF LAW SCHOOL GRADUATES *

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I appreciate the privilege of discussing with this group the topic of placement and apprenticeship of law school graduates. The views I express are solely my own and do not represent the official attitude of Columbia Law School. Naturally I take full responsibility for anything I may say.

Ideally, a paper on this topic should bristle with statistics and be full of graphs and curves; but the statistics are not available. They are being collected by Reginald Heber Smith and his staff, and two or three years from now we may have enough facts and figures to form some scientific conclusions as to both the quality and quantity of legal education and its relation to the needs of the bar and of the public.

Yet even in the absence of statistics, we are not wholly ignorant about the problem of placement; but there are relatively few people in the country who have been compelled to get something of a country-wide picture of the placement problem. The accuracy of local knowledge about local conditions is in inverse proportion to the size of the city or area involved. New York and Chicago are so large that almost no one has a complete picture of the placement opportunities for young lawyers in either city. In other cities many lawyers, some of whom are local bar association officials, have fairly accurate ideas about local opportunities. However, through force of circumstances, Mr. Harrison Dimmitt, Secretary of the Harvard Law School, and I and possibly three or four other persons connected with large law schools have had to become acquainted with the general situation in the United States. I have been interested in placement ever since 1935. In 1937 I visited eighteen cities, mostly in the Middle West. In November, 1947, I again visited eighteen cities, including at that time Denver, four West Coast cities, and Dallas and Houston. Recently, I have written to every lawyer I met in the 1947 trip, and their responses indicate that the situation has not changed markedly in the last ten months.

Before I attempt to outline that picture, let me draw a somewhat generalized pattern. In all towns or cities of over 50,000 population the best law business is in the hands of relatively few people. This inner circle of lawyers handles the work of the local banks, utilities, insurance companies, manufacturing concerns, and commercial concerns of any size. In addition, these men represent the large national enterprises whose legal headquarters may be elsewhere. Please remember that I am trying to describe a situation and not to criticize it.

Outside this inner circle is a fairly narrow fringe of what might be called plaintiffs' lawyers who, on the whole, represent interests adverse to those

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represented by the inner circle. These plaintiffs' lawyers are able, hard-working, aggressive, respected—and sometimes feared—by the inner circle. On the whole they do quite well financially.

Beyond this narrow fringe lies the realm of outer darkness. It is peopled by a very large number of lawyers who are barely making a living. They haunt the courts in the hope of picking up crumbs from the judicial tables, such as small receiverships, guardianships, and so forth. For the most part they are quite active in the local political clubs, hoping that eventually they will obtain the long-desired plum that will give them a more regular and more substantial income. It is the presence of this group in every sizable community that leads everyone to say that the bar is overcrowded.

If a law school graduate can find an opening in the inner circle or with a good plaintiffs' lawyer, he can usually look forward to a reasonably successful career. So, too, can those graduates who secure an opening with the law department of a large corporation or utility or bank. A now relatively small portion of law school graduates secures government positions, either Federal, state, or municipal. With more frequency than we realize, such positions open up a lifetime of interesting and useful work. Able and devoted attorneys in government positions in some localities seem to have a way of surviving political changes.

These broad outlines were true in 1937 and I found them again true in 1947. In the intervening decade, of course, a lot happened to the profession. The war drained off almost all the available young men. Partners in large law firms were looking up their own law; women lawyers were cherished because they were draft-exempt; many veteran lawyers returned to help out, and almost anyone who was a law school graduate could get a job somewhere. The enrollment in the law schools dropped to incredibly low figures. Harvard at one time had a total of 99 students. Columbia had as few as 115, and the only reason we had more than Harvard was that we admitted women and Harvard did not. Many schools closed their doors completely.

But right after V-E Day the tide began to roll in. By September, 1945, Columbia's enrollment had risen to 277, and by February, 1946, it had risen to 568 with a first-year class of 208, which was a pre-war normal. The numbers increased until in September, 1947, we reached a peak of 949. A similar increase prevailed in other schools.

Most of the law schools which had remained open during the war period ran on an accelerated program so that the three academic years could be covered by continuous attendance for two calendar years. When the program was first instituted in 1942, the purpose of this acceleration was to enable young men subject to the draft to secure as much law training as possible before being called into the service. After V-E Day the accelerated program was continued in order to allow the returning veterans to complete their legal education as rapidly as the law would permit.

Furthermore, at the beginning of the war it was estimated that by the end of the war there might be a five-year deficit in supplying the needs of the profession for new recruits. Considering that the peacetime draft started in 1940, this estimate was not far wrong.

Nevertheless, the continuation of the accelerated program has placed upon the market a flash flood of law school graduates. Let me illustrate. In pre-

war times Columbia would graduate about 160 students every June. In the period from February, 1948, through September, 1948, Columbia will have turned out over 450 graduates, or about three times the normal. The accelerated program does not end until June, 1949, so that in the seventeen-month period between February, 1948, and June, 1949, Columbia will have graduated two and one-half times more students than it normally would graduate between one June and the next. The graduation figures for other schools are comparable.

Is the bar going to be able to absorb this flash flood? Frankly, I doubt it. The upper-level graduates of the best known schools will probably be fully absorbed, but many men and most women graduating during this period will find their entry into the profession either delayed or postponed indefinitely.

Why have I reached this conclusion? Were the schools at fault in overcalculating the deficit? I think not. There was just about a five-year deficit to be made up. I think, moreover, that the profession wants and needs help. But the problem centers to a great extent around the lack of physical space. After V-E Day the veterans previously employed by law firms returned, thank heaven, in large numbers. The offices in which they had been employed took them back and put them to work. Yet many of the older lawyers whom these offices had hired temporarily during the war proved to be worth keeping on a permanent basis. Many of them were retained, and, with the returning veterans, the offices became overcrowded. Younger men were assigned to table space in the office library, occasionally desks were moved into the lobby. The space problem became one of paramount importance, and new space was not available. This was not a situation which could or can change rapidly. New building of all sorts is progressing very slowly. No one has yet suggested the erection of Quonset huts on the roofs of the larger office buildings. I have a feeling that such a suggestion may still be worth making.

There is another factor at play in this situation. The big offices with the largest absorbing power got the word, as they say in the Marine Corps, that the class graduating in February, 1948, was the best class that the schools had had in many years. Selected from a very large number of applicants, that class showed a generally high level of performance that exceeded the performance of even the best of the pre-war classes. I think almost every school in the country would agree with that statement. The large offices, therefore, waited for this class, and it was quickly and quite fully absorbed. This naturally reduced the number of places available for the class of June, 1948; and the class of September, 1948, and those of February and June, 1949, will find it progressively difficult to obtain immediate placement.

I wish I had a large number of helpful suggestions about curing or taking care of the situation. I feel very strongly the debt we owe to the veterans who compose a very large percentage of these classes. But the facts, as I see them, are stubborn. The absorbing power of the small towns and rural areas is at present very limited. The absorbing power of the larger urban areas is fast approaching a temporary saturation point. The result will be that the bar and the public are going to lose the benefit of the services of many capable law graduates. This does not mean that their legal education has been wholly wasted. Training in law has general benefits to the individual. Many of these men and women will, I am sure, eventually get into

politics. Those who go into business will find that their legal training is not only helpful for the technical information it has given them but also that modern business demands a passion for facts, an ability to analyze facts objectively, and a skill in presenting the facts persuasively—three skills which a law training develops.

The present situation shows the need for a more rational recruitment program. It has been suggested that lawyers should look over recent college graduates and encourage likely-looking youngsters to go to first-class law schools. Such encouragement might be coupled with a fairly definite commitment that if the men selected showed ability they could expect to be taken on by the sponsoring attorney after graduation. I realize the difficulties and dangers of making long-term commitments; but what is needed in legal education is a flow of students to the schools, coupled with a reasonable assurance that such students can return to home base upon graduation. I submit this suggestion for your earnest consideration.

We now come to the second division of the paper—certain long-term aspects of the problem of placement and apprenticeship. I have long felt that both the profession and certainly the larger law schools are altogether too mark-minded. The whole tendency has been to feel that only the students with high law school grades have good prospects of becoming successful and useful lawyers. And this attitude persists in spite of the old aphorism that the A men make the professors, the B men make the judges, the C men make the lawyers, and the D men make the money. It is true, of course, that, all other things being equal, it is safer to bet on the man with high marks than on the one with merely passing grades. But frequently all other things are not equal. What are these other things? Common sense, poise, courage, industry, the ability to inspire confidence, and the ability to attract people. I think the members of the profession here present will be the first to admit that in almost every office one of the most valuable men is a somewhat slow, thorough person with a huge store of common sense and good judgment.

I don't know exactly where to put the blame for this exaggerated concern with marks. In the larger schools the competition for recognition during student days has been and continues to be tremendous. To be elected to the law review, if possible to become editor-in-chief, or, on a somewhat lower level, to acquire some other distinguishing label—these become goals of the utmost importance. These are some of the evil by-products of mass education, for if one is going to be educated as part of a mass, in our competitive system it is essential to be differentiated from the mass.

If we lawyers were as popular with the public as the doctors, the law schools could afford to abandon mass education and give the excellent but expensive type of individual instruction which is available in almost all medical schools.

It may be objected that this problem of mark-mindedness is confined to the large law schools, yet today all the schools are relatively large. Some schools with a normal pre-war enrollment as low as 100 are now trying to take care of 300 students.

I feel very strongly that the general objective in legal education, in spite of the probable continuing necessity of having relatively small faculties deal

with relatively large numbers of students, ought to be one that will enable even the largest schools to report to prospective employers on their students as whole human beings and not merely as a set of examination grades. How can this be done? Even in the larger schools there is a tendency to require individual outside papers, to require certain amounts of seminar work and other points of intimate contact between the professors and the individual students, such as moot court work, legal aid, committee work, and so forth. Without the introduction of an undue amount of paper work, it seems to me feasible for even the larger schools to secure quite a lot of information about each individual and to discover whether each individual has poise, good judgment, good sense, initiative, courage, the ability to inspire confidence, and the ability to attract people—thus enabling the placement officer to say to a prospective employer, "This man is not only capable, but he has qualities that in the long run will prove more valuable than sheer legal brilliance."

I am not trying to depress the value of a first-class law school record. I am trying to suggest the importance of getting information about qualities which every one of us knows are demanded by and needed in the work of the profession.

Such information will, of course, have to be supplemented by individual interviews with the placement officer; but the conclusions drawn from these interviews without this supplementary information are bound to be impressionistic and superficial. Some qualities are pretty fully revealed in even a single interview, but others can be discovered only in action. That is why the larger schools, in particular, will need to increase, if possible, the points at which the individual student can be observed in actual performance.

Along this same line, it may be well to encourage law students to work during a large part of each summer in a law office. Even if the work in the summer following the student's first year were only that of a fairly responsible office boy, such work would afford a much needed opportunity to observe the student as an individual in action. The work following the student's second year of law study could be quite similar to that of a junior clerk and would give the office an excellent line on his future usefulness. In addition, I believe that such work would give point and added zest to the student's final year of law study—a year that too frequently is marred by excessive boredom and impatience with school routine.

Furthermore, one of the fundamental difficulties in modern education is that young persons are shut off from actual experience in the working world. In almost all economic classes children have very little idea of what their fathers actually do to earn a living. The law schools and the legal profession should seek to remedy this by insisting, if necessary, that perhaps even before entering law school the prospective applicant should have some acquaintance with the work of the courts and with what a lawyer does in his office and in the courts. It is a matter of repeated and distressing astonishment to me how many law students have never been inside a courtroom. This is something the schools and the profession should move to correct.

I want to conclude with a few words about the differences, if any, between practice in the large cities, the smaller cities, and the rural areas. It seems to me that the student in the large law school who knows that he is going to practice in a rural area is not placed under any handicap by attending a

large school. He would be well advised to give a good deal of attention to courses in real property and to courses in practice and procedure. If there is any sharp differentiation between big-city practice and practice in the smaller communities and in the rural areas, it is that practice outside of the big city demands greater versatility. The lawyer in the smaller cities and rural areas needs to be able to turn quickly from one thing to another. In the same day he may be working on a contract, a lease, a will, a deed, and arguing a motion in the nearby court. In the larger cities there is some tendency to specialize, a tendency which appears fairly early in the young lawyer's career. This, I think, is unfortunate, because the ideal legal training consists not only in getting a good law school education but in getting something that corresponds to an internship in medicine, where the youngster is confronted with the necessity of turning from one thing to another and thereby increasing his knowledge, experience, and judgment. If the large offices in the big cities make any serious mistakes in their hiring and training policies; they consist in not putting more emphasis on the importance of common sense and good judgment in the selection of new clerks and in not affording their younger men a longer period of varied training. In these respects the smaller cities offer a better training ground than the larger metropolitan areas.

Finally, I think we can all agree that the study being made of the profession by Reginald Heber Smith under the auspices of this Association has been long overdue. When the figures are finally available, it seems to me certain that the law profession will need the further services of Mr. Smith, who can do for the legal profession what Dr. Simon Flexner did for the medical profession—but with this caveat: If the legal profession decides to reconstruct itself, beginning with legal education and going on up through the highest reaches of the bar, we must bear in mind that the purpose of such reconstruction must not be to form a limited and exclusive guild which, because of its small numbers, can profit greatly in furnishing the community with much needed services. We must remember that the profession exists to serve the community as a whole in its search for justice. Unless the profession remains large enough and flexible enough to serve the ordinary individual we shall not fulfill our necessary and important social function.

A rational and effective recruitment and placement program is an essential part of the task of keeping the bar healthy, active, and properly alert to its opportunities for service. It is a privilege to have even a small part in supplying the bar and the public in their continuous need for fresh recruits, variable though that need may be.