

April 2021

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Recommended Citation

Karl P. Warden, *The Role of a Lawyer*, 38 *Dicta* 307 (1961).

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THE ROLE OF A LAWYER

A Preview of the Experiment in Education for Professional Responsibility at the University of Denver College of Law

By KARL P. WARDEN*

I. A FEW LEADING QUESTIONS

The practice of law is called a profession—but what is a profession? Is there any valid distinction between a business, trade or job and a profession?

Paid football players are “professionals.” Ask any man—“What is your profession?”—and he will answer according to his calling. “I am a taxi driver.” “I am a grocer.” “I am a salesman.” Should he answer, “I am a lawyer,” would this answer set him apart from the others? Why?

Today almost all lawyers are graduates of the instructional program of some formally organized law school. The law schools are proud of their record in training for professional competence. Their graduates can distinguish a tort from a crime. They can recite the rule in Shelley’s Case. They can organize a corporation. They can pass a bar examination. In time, if the graduate practices his calling, he becomes proficient in its technical aspects. His contracts become more binding. His business advice becomes more valuable, and more expensive. Is he then practicing a profession? Or is this merely a trade?

If there is a distinction between a profession and a trade, it lies not in competence nor in the nature of the act performed. If the plumber is not competent, he will soon lose his trade. If the lending institution does not use proper forms for a construction loan, it loses its money. Thus both competence and form of activity lose their uniqueness to any one trade or profession. Being mere matters of degree they do not set the lawyer apart from the other good members of the community.

Is there then any distinction between trade and profession? Let’s look at the other side of the coin. Can it be that the true distinction between profession and trade lies not in the honor and dignity to be accorded to the former and denied to the latter, but rather in the special obligations demanded of the profession and not of the trade? Is the assumption of the mantle of the legal profession the taking on of extraordinary duties? Is the professional more debtor than creditor?

II. HISTORY OF THE PROJECT

Anthropological studies of the legal profession might reveal that some answers to the questions above are non-existent. The lawyer’s role in society is uncertain to the general public and to the lawyer himself. Lawyers enjoy the probing of societal nerve ends but seldom feel the urge to gaze at their own navel.

One such rare navel engagement was held in 1959 at the University of Michigan Law School.¹ The participants met in small seminar groups to study specific problems confronting the profes-

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¹The Law Schools Look Ahead, a conference on legal education. Ann Arbor, Michigan, 1959.

sion and education for the profession and then reported their discussions to the entire conference. A final report was published which, to some extent, reflected the thinking of the conference group as a whole. Yet one of the most challenging statements suggested by the seminar groups is not to be found in the final report. This statement, by the Green Group² was:

We all agree that more college graduates will seek legal education in the next fifteen years, although we admit ignorance as to just how many. This arises from the lack of competent scientific studies not only of population growth but also, and more importantly, a knowledge of what society's demands for lawyers will be in the next twenty-five years. This latter question involves a job analysis of the legal profession . . . [This] . . . *involves a thorough study of what the lawyer can and should do in society.*³

Following this suggestion, in the latter part of 1959, a letter was written by the University of Denver College of Law to one member of the legal profession in each of the fifty states. The names of the recipient members were selected at random from *Martindale-Hubbell* and the only criterion used in the selection was that the recipient must have been engaged in the active practice of law over ten years. The letter was as follows:

*John E. Doe, Esq.
Attorney-at-Law
Anywhere, U.S.A.
Dear Mr. Doe:*

At a recent conference on legal education held at the University of Michigan Law School the suggestion was made that in order for the law schools to know what society will demand of the lawyers of the future there should be conducted:

" . . . a thorough study of what the lawyer can and should do in society."

This suggestion has captured my attention and I am writing to one lawyer in each state to ask his considered opinion on the question of the desirability of such a study.

² The membership of this group was divided evenly between Deans and faculty members of law schools and members of the practicing profession. Ross Malone, then President of the American Bar Association, took part in the meeting in which the study above described was proposed.

³ *Supra* note 1 at 34 (Emphasis supplied.).

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If the replies indicate that such a study might be useful then I shall continue to look into the problem.

I should appreciate the benefit of your thinking on the question and also any ideas you may have as to the matters that should be encompassed in the study if it is made.

Thank you for your consideration of this request.

Sincerely,

No return envelope or card was included with the letter. The language of the letter was made deliberately vague in order to permit the answer to assume any form or direction its writer might desire. It should be noted that statistical studies show the expected return on such a mailing, when return postage is included, seldom exceeds twenty-five percent. Without return postage included such questionnaires rarely produce more than a ten percent return.

Much to the surprise of the College of Law, over fifty percent of the attorneys queried wrote letters of reply. Even more surprising was the nature and great length of these replies. The overwhelming majority indicated great concern over the public image of the lawyer. Most seemed to feel that popular decline of the lawyer image, generally assumed to be a fact, was caused by failure of the profession and the law schools to inculcate in the nascent lawyers any real awareness of the true meaning of the word lawyer. Typical of these letters was this one:

I appreciate your writing me about your contemplated study of what the lawyer can and should do in society.

It seems to me that this is a fertile field with great potentialities. Law schools would make a mistake to abandon the bread and butter subjects which must continue to constitute the solid core of law school curriculum. They must not, as it were, get too far afield chasing butterflies.

But, along with the conventional and traditional solid law school courses, the law students should have some orientation and indoctrination in what constitutes our social order and what are peculiar opportunities and responsibilities of lawyers.

There is a great tendency nowadays to measure all things from the commercial or money making standpoint. We must not forget that we are members of a profession, and we must be sure that the oncoming lawyers from year to year fully understand exactly what a profession is. Roscoe Pound and others have undertaken on numerous occasions to give us some definitions.

With the constantly increasing intrusions of Government upon our lives, it becomes more and more necessary that law be thoughtfully created and administered. Law improperly conceived and recklessly administered inevitably leads to tyranny and totalitarianism.

The lawyers have an awesome responsibility. The law schools ought to make sure that the young people preparing for the legal profession fully understand what the lawyer can and should do in society.

These letters were circulated among the members of the faculty of the College of Law, and from the discussions which followed

it became quite clear that the faculty and the profession were in full accord—something must be done to give to the law students some real awareness of their role in and obligations to their society and their chosen profession.

The problem then became—what to do? A course entitled "Legal Ethics" had been offered at this College, and in most law schools, for many years. Its avowed purpose was to teach students the Canons of Professional Ethics and to combine with this some practical insight into the practice of law.

The students' interest in the Legal Ethics course was limited. Consequently, the course was difficult to teach. The instructor was left in a quandary—if he moralized, the students resented and rejected his preaching. They adopted the attitude that ethical conduct was learned at their mother's knee, that professional ethics must necessarily be equated with this teaching, thus there was no need for further study. If the teacher failed to moralize, the students assumed he did not approve of the Canons and of the opinions interpreting them. With this conclusion formed, the students used the hour to contemplate trusts or future interests or one of the more important "practical" courses.

A very limited number of elder statesmen in the legal profession or in the law teaching profession are able to overcome student apathy solely by the strength of their own personal magnetism. But such elder statesmen are rare, and seldom can they be persuaded to exercise this influence in the Legal Ethics classroom. Another solution had to be found.

The next step taken by the College of Law was to organize a committee of community leaders and University personnel. The roster for the committee included: the Honorable Henry Santo, District Judge; the Honorable John Sanchez, Municipal Judge; Dr. William W. McCaw, Jr., M.D., psychiatrist; Mr. Edward W. Grout, Director of Parole, State of Colorado; Robert B. Yegge, Esq., practicing attorney; Mr. Leo Gemma, Esq., Chief Probation Officer, Denver Juvenile Court; Franklin Thayer, Esq., Executive Attorney, the Denver Legal Aid Society; Yale Huffman, Esq., Assistant United States Attorney; Dave Manter, Esq., practicing attorney (Mr. Huffman and Mr. Manter acting as representatives of the student body of the College of Law); Dean Harold E. Hurst, College of Law; Professor Vance R. Dittman, Jr., College of Law; and the author. This committee was charged with studying the prob-

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lems raised by the survey of attorneys and by the experience in teaching legal ethics and with discovering some workable means by which the College of Law could deal with these problems. Four factors became apparent from early committee meetings: First, there were no ready-made solutions. Second, any approach the College of Law might adopt would necessarily be completely experimental. Any experiment would be a success, however, in that it would either reveal a solution to the problems or it would reveal that the problems could not be solved. Both would be valuable discoveries. Third, any solution must emphasize personal contacts between law students and clientele of the typical law office. Finally, the committee recognized the almost unbridged gap between the practicing legal profession and other professions, social and medical, whose ultimate goal is to solve or relieve human misery.

The problems described above were not limited to the University of Denver College of Law. Similiar troubles had been experienced by law schools across the nation.

Because of this growing concern, the National Legal Aid and Defender Association was given a grant of \$800,000 by the Ford Foundation "for the improvement of legal clinic and internship programs in law schools." This grant was announced in October of 1959. The NLADA established the National Council on Legal Clinics to administer the fund and Professor Howard Sacks of the Northwestern University Law School was selected as its administrator.

Immediately following the public announcement of this fund approximately seventy law schools, including the University of Denver College of Law, expressed an interest in participating in the project. But the terms of the announcement were vague, perhaps purposely so, and following it a series of policy memorandums were issued which slowly developed in greater detail the exact purpose of the experiment. Early in 1960 the National Council on Legal Clinics announced that the purpose of its project was "to stimulate and assist law schools in the establishment or improvement of effective programs for the education of law students in professional responsibility."

The University of Denver Committee recognized the close parallel between the problems it was attempting to solve and the research projects announced by the National Council on Legal Clinics. Thus the committee turned its attentions to the University of Denver proposal, directed to the National Council. Within a few weeks, the committee was able to produce a final working paper utilizing the ideas of the committee and the proposals of the National Council. This document of the University of Denver Committee was used as the rough draft for the proposal submitted to the National Council on Legal Clinics.

The formal proposal to the National Council, prepared by the University of Denver, drew heavily on the ideas developed from committee and faculty discussions following the survey of lawyers. On March 29, 1961, the National Council announced that the Uni-

versity of Denver College of Law was one of six law schools⁴ across the nation selected to receive the initial grants from this fund. The award to the University of Denver was \$32,500. The great experiment was launched.

III. NATURE OF THE PROJECT

This grant to the College of Law is to be expended over a three year span, and the subject of the experiment is to be the day division class entering the study of law in September, 1961, and graduating in June, 1964. Other classes will participate to a lesser extent in the project.

There are three broad levels to the experimental structure. (1) *Formal Study*—this involves classroom lectures, case study, research, writing and assigned readings. (2) *Internship Study*—a form of field work involving the students in direct contact with the subjects covered by the formal studies. (3) *Seminar Study*—here the field and classroom experiences are gathered and examined by the group under the leadership of an expert in the area of the study.

The development of this structure will be such that the student will operate on all three levels simultaneously. This will continue throughout the three years of formal legal education and will be superimposed on and integrated with the regular curriculum.

The function of the structure will be to give to the law student professional experiences equivalent to the practical experience had by physicians in their formal study. He will be shown the broad spectrum of social problems faced by a professional man to the end that his transition from law student to law practitioner may be swift and profound.

IV. THE PROGRAM

To give the law student this background of experience, and to help him gain a realistic awareness of the scope, responsibility and importance of his professional role, these are the experimental steps the College of Law proposes to follow:

A. Freshman Year

During the first two quarters of the student's freshman year he will be taken to see social and legal institutions established in Colorado to deal with important social problems. Prior to each trip the student will be given information by representatives of the

⁴ The other five are the law schools of: the University of Illinois; Willamette University; Northwestern University; Ohio State University and Temple University.

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institution as to its jurisdiction, function, goals and problems. At the conclusion of the field trip he will be afforded an opportunity to have answered, by an expert in the field, the questions which have suggested themselves to him as a result of seeing the institution and its inhabitants. For example, the student will be taken to the penitentiary at Canon City. Prior to this visit he will receive background information concerning the institution. While there he will have an opportunity to see every aspect of its operation—from death row and its gas chamber to the pre-parole center and its almost free men. After the visit, he will be given an opportunity to raise and have answered by Warden Tinsley, an expert in the field of penology, any questions he may have about what he has seen and done. Other freshman-year trips include those to Juvenile Hall in Denver, to the federal and state courts in Denver, to the State Training School at Wheatridge and to the State Mental Hospital at Pueblo.

Such trips are designed only to introduce the student to problem areas. They are preliminary exposures to later clinical experiences designed for study in depth.

The third quarter of the freshman year will involve the student with seminar study of the Canons of Professional Ethics and the Canons of Judicial Ethics. These seminars will be conducted on the basis of problem discussion after extensive reading of background materials from professional and non-professional sources. Guest seminar leaders from the legal and other professions will be used liberally in an effort to give the student a wide acquaintanceship with ethical problems confronting the practicing attorney.

B. Junior and Senior Years

During the student's second and third years of law study he will participate in the internship program. For example, during one quarter of this period he will be offered the Social Problems Internship Block. From this clinic block he might elect to work with Alcoholics Anonymous, with the Red Cross Disaster Unit, at the Citizens Mission (Skid Row), or with any number of other organizations designed to deal with today's human problems. He will read in the problem area and he will meet in seminars with experts in the field. Then the student will participate in the particular institution, not merely as a casual visitor, but as a working member of the staff.

The program is so designed that during each of five school quarters the student will engage in the internship study and research. In each area he will select from a broad spectrum of working experiences. He must select some experience from each of the internship or clinic blocks during each quarter of law study. The time to be spent by the individual student in any clinic block will vary according to the particular experience selected. As a rough average, it is anticipated he will spend 20 working hours in the institution, exclusive of the classroom element.

Briefly stated the five internship blocks are these:

1. *Attorney-Client Block*—The student will work in the Legal Aid Society Office; he will try cases in the justice and municipal

courts; he will work with various law enforcement agencies; he will participate with practicing attorneys in the preparation and trial of district court cases; he will work with the higher courts to observe the decision-making process first hand.

2. *Penological Block*—The student will work in one of the many correctional institutions in Colorado designed to incarcerate, rehabilitate or otherwise deal with youths or adults whose actions have involved them in the criminal processes of the state. The student will work not only with the persons who administer these institutions, but also with those who are the inmates.

3. *Medical Block*—The students will work with the practitioners of the various branches of the medical profession. For example, a student may perform work as a ward attendant in a home for the mentally retarded. The student may take part in the staff conferences of a hospital for the criminally insane. He will serve in a working capacity in some such institution in order to meet practicing medicine first-hand and on its own ground.

To illustrate—early this summer I volunteered myself as the first guinea pig in the Medical Bloc. I arranged with one of the mental health clinics in the Denver region to spend a day as an observer. I was introduced to that portion of the staff that was present early in the morning, and then I was free to mingle with the patients or staff as I saw fit. I joined one of the groups and stayed with it throughout the working day. At this particular institution the staff and patients are not distinguished by uniforms or other external signs. Consequently, I passed the whole day under the impression that one lady was a member of the staff. She later proved to be one of the most ill of their patients. On the other hand one of the staff psychiatrists assumed that I was a new patient and treated me accordingly. At the close of the day I read the records of a number of patients with whom I had been associating. To compare this professional diagnosis with my own guesswork was most revealing and a completely deflating experience. Needless to say it pointed out how completely wrong my lay diagnosis were in almost every case. But this was a valuable beginning for the education of a lawyer into the mysterious world of the mind. It upset all of my well cherished notions concerning mental illness. This same experience will be had by the law students. Then it will be followed by an opportunity for the student to learn from the ex-

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perts in the field the true meaning of mental illness. Let it be made clear at this point that our goal is not to train psychiatrists or psychologists, but it is to train lawyers to have some correct information concerning mental illness and to have some first hand experience with it. This simple experience will not be a complete education in mental health, but it will serve to open the eyes of the student to what is being done in the field. His reactions, pro or con, will be his own, but he can no longer claim the defense of a virginal mind.

4. *Social Problems Block*—This block has been described above. It involves the student in the missions and in the other private institutions and agencies such as homes for unwed mothers, homes for the aged and infirm, or the family service agencies. In each of these clinic blocks an effort will be made to permit the student to select his area of investigation from as broad a range of experiences as the College of Law can gather and administer.

5. *Community Service Block*—During his senior year the student may participate with an outstanding practicing attorney or jurist in his social, political and professional life. Through this medium an effort will be made to broaden the student's cultural, political, civic and leadership horizons. He will be exposed to the contribution which the lawyer, as a leader, is expected to make to his community. Because of the highly experimental nature of this block, it will not be required, but will be on a voluntary basis.

The final quarter of study in the program will be built around a seminar on Professional Responsibility. Here the student will bring, together with other students, the results of his various clinical experiences. These multiple exposures will be tied together and will be directly related to the legal profession's role in society. It is in this seminar that problems such as the improvement of the administration of justice through procedural reform, and other problems of major concern to the bench and the bar will be discussed.

CONCLUSION

The goal of this program at the University of Denver College of Law is to train young men and women for the practice of law as a profession in the highest sense of the word—to introduce them to the world in which they will practice, a world which is vastly different from the world in which they were reared. These shocking experiences must be met gradually and intelligently to avoid the possibility of the student shutting his eyes forever to the less attractive aspects of his society and thus ignoring the great responsibilities that are required of him as a member of a great profession, and not of a trade. Essential to this purpose is the inculcation in the student of the three ethos of the Professional Responsibility Program—Humility, Humanity and Horse Sense.

Should this experiment in Professional Education succeed, the freshman class beginning its study of law in 1961 at the University of Denver College of Law will be the first class from any law school to graduate formally trained, not only in professional competence, but also in the role of tomorrow's community leaders, the professionally responsible lawyer.

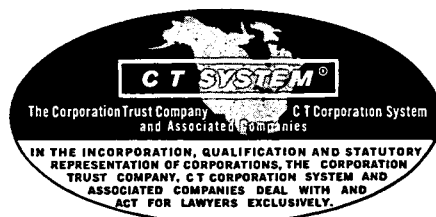
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