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THE FUTURE OF THE BAR

*By ROBERT H. JACKSON**

Many thoughtful men are asking whether the bar is like the Irishman's hunting dog whose "future was all in the past".

In pioneer American society, three groups claimed to be "learned professions" and proved the claim by default. They were the preachers, the doctors and the lawyers. By present standards the preacher was a fool, the doctor a quack and the lawyer a statesman. While foremost preachers like the Mather family were trying to devise means to counteract witchcraft and sorcery, and leading doctors were practicing blood letting and "curing" fever by denying the patient water, leading lawyers like James Madison, John Adams, Thomas Jefferson were charting a nation's destiny and building the framework of future American society. Of the "learned professions" only the lawyer's work stands the test of time.

While the legal profession today has brilliant leaders, he would be an optimist who claimed that it leads other classes by any such margin as characterized the pioneer era. He would likewise be an optimist who would claim that the legal profession today is contributing to national leadership in anything like the proportions that characterized the pioneer era. Education is no longer a monopoly of a few. Bankers, economists, business men, engineers and all sorts and conditions of people have become learned, equally with the lawyers, and the rising standards of general education have overtaken us. The requirements for the law have not kept pace with the advance in general and in other specialized education.

Is there evidence today of a future for the legal profession in keeping with its high traditions? In 1919 there were 850 applicants for admission to the New York State Bar. In 1928 there were over 3,000, an increase of 300 per cent in 9 years, or an average increase of over 30 per cent per year. There are over 9,000 students, preparing in New York City to apply for admission to the bar, which bar numbers about 20,000. These figures foretell a vast increase in numbers of the future bar. There is no corresponding increase in the amount of business to be transacted by the legal profession. This inrush of new members promises keener competition, and competition, while it may be the life of business, is the death of ethics.

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We must bear in mind that neither the bar as it is now constituted, nor the public which must ultimately foot the bill, is exercising any adequate selection over those who are admitted. Their intellectual fitness is determined by written questions and answers. So far as intelligence tests go, there is no reason to doubt that the State Board of Law Examiners of the State of New York have attained to as accurate and equitable results as can be devised using the question and answer system. But how different would be the method of one of us who desired to select corresponding counsel in a distant city to handle an important matter. Would we think of selecting fit counsel by submitting a lot of question to be answered? Our method would be more simple and direct. We would ask what education he had, but we would be more impressed with his standing among his associates, what clients he represents, what matters he had handled, what is the general character of his practice, what was his background, what is his reputation among judges and lawyers for reliability, punctuality, industry and fairness. None of these basic conditions of a lawyer's fitness can be ascertained by written question and answer. To make such a test exclusive and final, is as simple minded as selecting a wife by correspondence.

Judge Pound in his address to the State Bar Association last January, pointed out that student days do not develop the weaknesses in men's characters which unfit them for the practice of law and that many defects are only revealed by the actual stress and strain of practice.

Yet we know from observation that a lawyer once admitted, is very difficult to expel from the bar. Technical proof of moral delinquencies is hard to obtain; someone must gratuitiously devote considerable time in preparing and proving the case. The result is that lawyers who refrain from the graver type of felonies are little disciplined for the violation of mere ethics.

It is suggessted that, in addition to the present requirements for preliminary education, a substantial period of apprenticeship should be required before final admission to the bar. This would not seem to be asking too much for if the law practice is so desirable a privilege that the number of applicants are increasing 30 per cent per annum, it would seem that society would be justified in valuing in terms of preparation so important a privilege more highly.

To require a real apprenticeship would be no departure from established practice. The building trades require an apprenticeship of substantial duration before the neophite can take all of the working tools of his trade into his own hands. Priests do service as curates, doctors as internes. The legal profession stands almost alone in permitting a man on the day that he has passed his intelligence test to take all of the tools of his craft into his own hands for better or worse.

We know, each from his own experience, that the lawyer does in fact serve a period of apprenticeship. He may come out of college with the Negotiable Instruments Law memorized section by section, and still not have the skill to get up in court and prove the signature on a promissory note. He might have learned well the Wigmore vocabulary of the law of evidence and still be unable to frame a hypothetical question or one that is not leading or otherwise objectionable.

After the surgeon has learned anatomy, he must still acquire by actual practice, skill in the art of operating and the finished lawyer must be no less a master of the art of proof than a student of the substantiative law. But under our present system, the moment a lawyer leaves college he may commence performing major operations upon his client and the public without supervision, apprenticeship, or further test of his skill.

An apprenticeship of two or three years, during which the student who had completed his preliminary preparation, should engage in actual practice, subject to the

scrutiny of his seniors who may ascertain his tendency as to associates, as to method of obtaining and handling business and his general qualifications, would lead to an intelligent control of the gateway to the bar.

In addition to controlling admission, there is need for more complete, representative and efficient organization of the existing bar. The American Bar Association numbers only about 20 per cent of the eligible lawyers, the New York State Bar Association only about 16 per cent.

It is hard to determine how far organized effort will influence our professional destiny. Evolution stubbornly refuses to be retarded by resolution, and conditions have a way of making their own terms with our theories. No type of organization could have saved the circuit riding lawyer from being buried in the same strata of fossils with his saddle bags, and I fear nothing can save the family lawyer or general practitioner from being buried in the same fossil strata as the tandem bicycle. The whole profession is carried along upon the economic tide and professions like machines, institutions and men must perform their functions in society or move toward the scrap heap.

Aside from motives of self preservation, the bar should organize effectively to protect itself and its clients from the imposition of unnecessary burdens.

One cannot contemplate the enormous duplication and multiplication of effort necessary to accomplish legal results today without realizing that both the profession and the public whom we represent are burdened with an overhead that is deadly. For example, in the settlement of an estate, duplicate and overlapping taxes and tax returns to many states, one kind of a return for the Federal and another for the Sate, create burdens which cost estates in legal services and the government in administration out of all proportion to the net return. Nobody knows this better than the lawyers. Yet all of these tax statutes have been tolerated by the bar which best knows both the evil and the remedy. This is but an example, many of which could be given, of impositions upon the bar and through the bar upon the client, of unnecessary labor.

Any theory that making more legal work, increases the net the compensation to the bar, is erroneous. A given result is worth about a given amount to the client. It will stand about so much charge. If the given result can be accomplished in one day it is profitable for the lawyer to handle. If it takes two days of red tape for the lawyer to accomplish one day's worth of result, he does not get proportionate pay for his time and in addition is regarded by his client as a robber. The economic tendency of this era has been to simplify work so that all could afford the product. Ford has reduced the price of cars to bring them within the reach of everybody, the Standard Oil Company steadily reduced over many years the price of its product and the tendency in electric rates along with large production has been to get the price within the reach of everybody.

The legal profession has been driven by the impositions of the legislatures as well as by its own antiquated forms and manner of doing business to the opposite and ruinous economic policy. Despite improvements in office method, the cost of conveyancing, incorporating, litigating, administration of estates, receiverships, and all other legal business has steadily increased.

The result of this inefficiency, in part our own and in part forced upon us, is a fear of lawyers. Every business man and every laborer wants to keep out of the hands of a lawyer for he distrusts our method and our result and fears our charge. He takes his collections to a lay-collection-agency, insures his automobile and his credits, takes out a policy of title insurance rather than to have a lawyer examine his title, has his deed drawn by a real estate man and takes his estate to the bank to be administered.

For many years the lawyers have been dealing as unorganized individuals with the problems facing us in our collective capacity. We have been getting nowhere fast. Our need is for a better bar organization sustained by adequate dues, commanding the respect of legislators and able to maintain a position of self-respect among organized crafts, such as the bankers and manufacturers associations, trade unions, automobile clubs, public utility organizations, medical profession and hold equality with the organized busybodies who father and mother so much of our legislation.

Federation of local bar associations into district Federations is a step toward better bar organization. The local associations are so lacking in cohesion, unity of purpose or sustained effort that they accomplish little for the members; that they are socially beneficial and useful in maintaining the contact of the members is of course apparent.

The State Bar Association meetings are necessarily remote from most parts of the state and it is difficult for the members to keep their contact with it. A federation stands between the two. It is local enough so that all practicing lawyers can attend its meetings, influence its deliberations, be acquainted with its officers and its efforts. At the same time it is large enough and broad enough in scope so that it can have a broader view point, more worthwhile programs and greater influence in representing its members. The ideal, however, is an organized bar of the whole state, with local associations in each city and county, district organizations in judicial districts and the state convention representative of all of the local associations. To this structure of bar organization the lawyer could belong or not belong. One membership and one set of dues adequate to do the work of this organized structure should make him a member of the Association, local, district and state. It should be representative of the bar and an efficient advocate of the interests of the profession in all public matters. Whether we like it or not, this is an age of organization, minorities govern providing they are sufficiently organized.

It is high time that the bar as a whole awakens to the need of collective action to solve the problems which face the legal profession. This "ancient fellowship", as Judge Cardozo has styled it, should be so organized as to view its future with hope as it views its past with pride.