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LEGAL EDUCATION AT NOTRE DAME*

I am grateful for this opportunity to discuss with you our plans and hopes for the Law School.

In my letter accepting appointment as dean I said this:

I understand that Notre Dame wants first of all a law school which ranks with the leaders in professional competence. But you want more than that; you want a school drawing inspiration from the Christian tradition, a school animated by and inspiring in its students a love of the law and a passion for justice. To accomplish this great end is the privilege and the challenge you have tendered me. I have accepted with a sense of mingled humility and adventure.

It is an adventure I invite you to share with me.

In my first appearance as dean before the student body I said this:

Our goal is to impart the know-how a lawyer must have and simultaneously to ignite the spark of a passion for justice. Most if not all of you came here to learn how to make a living practicing law. We owe a duty to you and to your parents to provide what you came to get. And we owe a duty to the clients who will consult you. But we will have failed no matter how professionally competent you are when you leave here, if that

* Substance of an address by Dean Joseph O'Meara to members of the Notre Dame Law Association in South Bend, Chicago, San Francisco, Los Angeles, New York and Washington, D. C. in the interval from January 29 to May 21, 1953.

is all you are. We must send out graduates who will carry in their hearts and exemplify in their professional lives the faith so eloquently expressed by Mr. Justice Jackson, as follows: "The lawyer must believe with all the intensity of his being in law as the framework of society, in the independent judicial function as the means for applying the law, and in the nobility of his profession as an aid in the judicial process."

We have a third responsibility. As I told the students, we owe a duty to them and their parents and to their future clients; we owe a duty, also, to the nation. Lawyers, more than any other occupational group, have molded the past which has brought our country to leadership in a troubled world. As they have molded the past, so too will lawyers mold the future. To train able lawyers who are eager to meet the challenge of this fateful age is, therefore, a responsibility which the Law School explicitly recognizes.¹ In short, the nation needs good lawyers and the Law School aims to give the nation good lawyers in increasing numbers.

But what makes a good lawyer? I have already indicated what I think the answer is: one who has not only technical proficiency but who has, in addition, a love of the law and a passion for justice.

Let me take up first the latter of these two components. How does one enkindle in students love of the law and passion for justice?² The short answer is that there is no answer; that is, there is no one-and-only answer and no sure-fire answer. But we believe it would help to acquaint the students with the history of the legal profession and we have introduced

¹ In a recent address on *The Teaching of Professional Responsibility*, 5 J. LEGAL EDUC. 302, 310 (1953), Judge McCoy made this striking declaration: "I take it for granted that law schools are in business to train lawyers and not just to cram into their students enough information to pass the bar examination. If I am wrong in this assumption, then there is something radically wrong with the law schools. On the other hand, if I am right, the failure of any law school to give an adequate course in the professional responsibilities of the lawyer is a fraud on the student, the public, the bar, and the courts."

² Under the leadership of Professor Robert E. Mathews, the Association of American Law Schools has planned a detailed study of "methods of training law students in a perception of moral values and in the responsibilities of citizenship." See 5 J. LEGAL EDUC. 217 (1952).

a course on that subject, keyed to the lives of great lawyers and judges, to familiarize them with the profession at its greatest and what it has greatly done. It is our hope thereby to nurture in the students an appreciation of the accomplishments of law and lawyers and a sense of the responsibilities, the dignity and the destiny of the profession for which they are preparing. No such course is taught in any American law school so far as I have been able to ascertain, but I have been told that Dean Wigmore used to give a somewhat similar course at Northwestern.³

Our course on the history of the legal profession will be given in the first year. In the second year there will be a seminar in which the students will examine actual, down-to-earth, here-and-now problems in the light of the Natural Law. This will be followed in the third year by a course on jurisprudence to acquaint the students with the great minds and great ideas of the law.

This is the proposed line-up so far as concerns the second of the two components I mentioned, love of the law and passion for justice.

Now as to the first component, technical proficiency. This comprises two elements, knowledge and skills. Of these I think the skills are more important.⁴ I think that can be

³ An impressive group of studies of the legal profession has been made recently under the auspices of the American Bar Association, an indication of growing interest in the nature, function and history of the legal profession by the profession itself. E.g., POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* (1953). See Smith, *Survey of the Legal Profession: Its Scope, Methods and Objectives*, 39 A.B.A.J. 548 (1953).

⁴ A comment by Dean Griswold of the Harvard Law School is pertinent in this connection: "Law schools should remember [the] well-established propensity for change and development in the subject matter of law practice. The odds are very considerable that the law student of today will be practicing something in ten or fifteen years of which he learned little or nothing, and could not have learned much, in law school. A certain amount of subject matter the law schools must surely teach. But if they regard subject matter as their sole objective they will almost surely fail to serve their students well. What they must teach is background, method, traditions, approach. Their students must know how to face problems, how to deal with new materials, how to go about getting to the bottom of a subject with which they have had little previous contact. Very likely these qualities will best be taught by classroom consideration of specific topics of the law as it is now. But neither

pretty well demonstrated. There is a time in a lawyer's life when he knows more "law" than at any other time and that is when he takes the bar examination. He will spend the rest of his life forgetting much of the law he then knows. Yet, as he forgets, he will become a better lawyer, and he will become a better lawyer because his skills will mature and multiply. We shall, therefore, be concerned not only with imparting knowledge but also with cultivating skills.

What are the skills a lawyer needs? They are many and varied, but the basic skills essential to professional competence are three in number. First of all, a lawyer must be able to diagnose a situation; he needs the faculty to pierce through to what is decisive. This, I suspect, is the most important of the skills a lawyer needs. Next, he must be able to "find the law," that is, he must be able to locate with facility materials relevant to his problem and he must have the *imagination* to use those materials to advantage in his client's cause. Finally, he must be able to express himself clearly, accurately and persuasively.

These are the basic legal skills and we shall try to develop them in our students.⁵ How? The first of the skills I have enumerated, skill in diagnosis, we shall try to cultivate by intensive training in analysis through rigorous use of the case method in the first year.⁶

What precisely do I mean by rigorous use of the case method? Concerning each case taken up in class a series of

teacher nor student should be lulled into thinking that this law bears close relation to the law which is likely to engage the attention of the student when he becomes an experienced practitioner." 4 HARV. L.S. BULL. 2-3 (1953), 5 J. Legal Educ. 438, 442 (1953). See also Committee on Curriculum of the Association of American Law Schools, *The Place of Skills in Legal Education*, 45 COL. L. REV. 345 (1945).

⁵ Each of these "basic legal skills" is in reality an aggregate of related and subsidiary skills, which it seems convenient and practicable to treat as fused into a single skill. A much more detailed inventory of "insights" and "skills" is presented in a thoughtful article by Dean Strong. See Strong, *A New Curriculum for the College of Law of The Ohio State University*, 11 OHIO ST. L.J. 44 (1950).

⁶ For a recent able discussion of the case method, see Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379 (1952).

searching questions will be asked. Not all of them will be put to one student; rather, each question will be put to a different student or to several different students — and the students will not be called on according to any decipherable pattern. Among the questions will be these:

What was the question in the case?

What were the essential facts which gave rise to the question?

What did plaintiff contend?

What did defendant contend?

On what grounds did plaintiff rely?

On what grounds did defendant rely?

What did the court decide?

What are the stated grounds of the court's decision?

Are the stated reasons for the decision the real reasons?

Did the decision follow or depart from precedent?

What practical consequences are likely to result if the case is followed?

Is the decision just?

Do you think the decision might have been the other way if the losing lawyer had made a different approach — if he had emphasized different facts or relied on different principles or precedents?

How would you have presented the case if you had represented the losing party?

These questions and the answers to them will beget other questions, each of which, in turn, will be put to one or more students.

The end result will be that the entire class or a large part of it will recite on every case. No one will go to sleep and no one will read the next case while someone else is reciting.

In this way we hope to sharpen the critical faculties of the students and, at the same time, fertilize their creative abilities

by keeping constantly before them the question, *How would you have done it?*

But this procedure is unworkable in large classes. It is our purpose, therefore, to divide large classes into sections of manageable size. This, obviously, will increase the teaching load and require an expansion of the faculty.

The remainder of the basic legal skills I have enumerated can best be cultivated, we think, by actual practice of the arts involved. Beginning with the second year, therefore, we expect to rely greatly on the problem method, whereby the student learns law by *using* it in working out specific legal problems.⁷ This gives the student intimate familiarity with the library and intensive training in the interpretation, adaptation and creative utilization of the materials he finds there. It has a further great advantage: how better awaken and maintain a lively interest on the part of students than by keeping them busy at challenging problems?

This brings me to the last of my inventory of basic legal skills, ability to speak and write clearly, accurately and persuasively. This we intend to cultivate by means of our law review, the *Notre Dame Lawyer*, and of our moot court system, which are very important features of our program.

In the ways I have been trying to describe, we hope to impart the knowledge and cultivate the skills a lawyer needs to represent his clients effectively in a twentieth-century, workaday world, but without neglecting, indeed always emphasizing the theoretical underpinning of the law, its great role in human affairs and the responsibilities, the dignity and the destiny of the legal profession as the priesthood of Justice.

The question arises whether the Law School's mission, as I have sketched it for you, can be accomplished within the framework of the elective system. I think not. The elective system, it seems to me, does more credit to the humility of its

⁷ See Cavers, *In Advocacy of the Problem Method*, 43 COL. L. REV. 449 (1943).

originators than to their judgment. It appears to proceed on the assumption that students know more about what it takes to make a lawyer than their professors do. If that were so, it would seem to be in order for faculty and students to change places. As a matter of fact, that's exactly what we are going to do at Notre Dame — with reverse English; hereafter the faculty rather than the students will decide what courses are best calculated to prepare a man for the practice of law. In short, we are going to have a prescribed program of instruction.

The elective system not only proceeds on a fallacy; in practice it involves many absurdities. I recall hearing Chancellor Hutchins tell of a student who never took a course above the second floor. And there is not only a spatial, there is also a temporal principle of selection at work: students have told me they made it a point never to sign up for a course given before 9:30 in the morning. In other ways, as well, the elective system tends to coddle students; it encourages them to choose what are thought to be snap courses and instructors with a reputation for marking high.

Moreover the elective system is at war with one of our obligations, namely, to train lawyers for responsible leadership. This means that our graduates must have a rounded and balanced legal education; and this, in turn, means that they must have training in areas which, left to their own devices, many would pass by. History and jurisprudence, of which I have spoken, are examples. Labor law is another. The rise of labor unions and the revolution in the law pertaining to them constitute one of the most significant social phenomena of our time and one with which a lawyer, both as lawyer and as leader, should have something more than a newspaper acquaintance. Yet many students enter the practice with only such knowledge of labor law as they have picked up from partisan debate about the Taft-Hartley Act.

More generally, and as a further example, there are the great fields of legislation and administrative law. Many students somehow get the idea that the only subjects of any real importance in the practice of law are those taught in the conventional common-law courses. I am at a loss to understand why anyone should think so. In any case, it is clear that a law school which aspires to turn out competent practitioners, who are at the same time equipped for responsible leadership, must cultivate an understanding on their part of the origin, growth, functions and procedures of these great institutions, the legislature and its offspring, the administrative agency. However nostalgic some of us at times become for the good old days, government would bog down hopelessly without administrative agencies. And it should be remembered always that a free and representative legislature is the hallmark of democracy. There were able and impartial courts in the days of Imperial Rome. But there has never been a free and representative legislature save in a democratic society.

The elective system is still in vogue but there is a trend away from it. At Notre Dame we have concluded it is our responsibility as educators to formulate a prescribed curriculum.

There will still be electives but they will be offered in the summer session. They will include not only traditional courses for which we are unable to find place in the required program, but also important specialities such, for example, as oil and gas law, patent and trademark law and the law of radio and television.

I have said that legal skills are more important than legal knowledge. But we do not intend to neglect knowledge and I think you will be interested in a device we intend to adopt in the expectation that it will improve scholarship. We propose to inaugurate cumulative, non-compartmentalized comprehensive examinations. At the end of every semester a student

will be examined on all of the material he has covered up to that point. Thus at the end of the second year a student will be examined not only on the work of the semester he has just completed but also on the work of the three semesters preceding that. And the questions will not be labelled; the students will not be told: "This is a torts question; that is a contracts question." On the contrary, the questions will cut across various fields of law as questions do with which lawyers have to wrestle in real life.

This will require, on the part of the student, *consistent* study. No longer will he be able to cram for tomorrow's examination with the thought that he need not remember what he learns beyond tomorrow. But the consistent study and the systematic and continuous review which this system of cumulative comprehensive examinations will necessitate, and which the School will organize, will reward the student with the kind of legal knowledge it is important to have — knowledge that is retained and kept current and so is always ready for action. Moreover, the interlocking system of cumulative comprehensive examinations and continuous, systematic review will bring the subjects the student has already covered into juxtaposition with those on which he is currently engaged, and thus will facilitate his understanding of the law by helping him to see the big picture, the law as a whole rather than as a succession of more-or-less unrelated fragments.

This system of cumulative comprehensive examinations has a bearing on the faculty as well as on the students; it will make great demands on the faculty. It will require close collaboration and teamwork on their part. And I am happy to be able to report to you that the spirit of the faculty is excellent and that they are working with me and I with them in the closest and friendliest cooperation.

Nor is this spirit confined within the faculty. One of the hallmarks of the Law School at Notre Dame is the close liaison between faculty and students. Members of the faculty are always accessible and devote to private conferences with students many more hours than they spend in the classroom. And it is a point of pride with us in our dealings with the students to demonstrate that we have a friendly interest in their welfare and are eager to be helpful. It goes without saying that this contributes materially to the spirit of the School.

Notwithstanding necessary preoccupation with day-to-day duties, members of the faculty are not neglecting the scholarly side of their responsibilities. You will be interested to know that five new books are in course of preparation by our faculty. Leaving aside those who have administrative duties, this means that two out of three of our faculty are writing books.

When all is said, the most important feature of the Law School — of any law school — is the student body. I am hoping that we can expand our student body. That is where you can help us. We have a magnificent building and it is time to increase our enrollment to take full advantage of our physical facilities. Send us students, good students. This I would put at the top of the list of things you can do for the Law School.

There is another thing you can do: help us place our graduates. The Student Law Association operates our placement activities with the able assistance of Professor Sullivan as faculty advisor. Keep in touch with us; let us know whenever you have or learn of a suitable opening for a young lawyer.

These are our plans and hopes for the Law School. As you will recall, I said in my letter accepting the deanship:

I understand that Notre Dame wants first of all a law school which ranks with the leaders in professional competence. But

you want more than that; you want a school drawing inspiration from the Christian tradition, a school animated by and inspiring in its students, a love of the law and a passion for justice. To accomplish this great end is the privilege and the challenge you have tendered me. I have accepted with a sense of mingled humility and adventure.

It is an adventure, I repeat, which I invite all of you and every friend of Notre Dame to share with me.

*Joseph O'Meara**

* Dean of the College of Law, University of Notre Dame. A.B., Xavier University, Cincinnati; LL.B., University of Cincinnati. Member of the Ohio Bar. Member of American Law Institute, American Bar Association, American Judicature Society, Academy of Political Science and others. Author of various articles in legal journals.