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John W. Kephart

THE LAW SCHOOLS' PART IN EXCLUDING THE UNFIT FROM THE BAR**

HONORABLE JOHN W. KEPHART*

I deeply appreciate the testimonial of this evening, not only as it may reflect some honor upon myself, but in a broader sense, for the credit it reflects on the institution of learning whose son has attained the position of Chief Justice of the Supreme Court of the State of Pennsylvania. Of course, old Dickinson College has been honored much in the past by having many of her graduates achieve high places in the State and Nation. We speak with pride of the fact that a President of the United States, a Chief Justice of the Supreme Court of the United States and a Justice of that court were among her graduates. That to these is added the office which I hold and which you honor tonight should keep the light of ambition constantly in the minds of the young men who have been to Dickinson or who expect to become graduates of this institution. With Dickinson College and the Law School working together we should be able to maintain our proud position in the sisterhood of colleges and law schools of the Nation.

In fact, we may all of us well be proud of our association with Dickinson Law School. Few American legal institutions have such a long record of distinguished service. Law was first taught at Dickinson in 1834, at the suggestion of Judge John Reed, then presiding in the ninth district court of Pennsylvania. He saw an urgent necessity for the establishment of an orderly system of legal instruction long before the need was generally recognized, and at a time when many of our judges were proudly unlearned in the law. As a result of his letter to the Trustees of the College in June, 1833, offering to undertake the conduct of such a course of instruction at Carlisle, and asking only a "nominal" connection with the institution, a Department of Law was created. Until his death in 1850, Judge Reed capably served as Professor of Law under the control of the College administration.

The first class enrolled for the study of law numbered few members, but students enrolled in the College were privileged to attend lectures. Some of these early law graduates achieved great prominence. Andrew Gregg Curtin, of the Class of 1837, was Governor of Pennsylvania during the Civil War—a period of great glory to Dickinson; another Dickinsonian, Alexander Ramsay, of the

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*See page 217.

Class of 1840, became Governor of Minnesota, United States Senator, and later, Secretary of War; Nathaniel B. Smithers, of the same class, served as Secretary of State of Delaware, and was elected to Congress; Carroll Spense, of the Class of 1842, became United States Minister to Turkey.

After the death of Judge Reed, the chair of law was vacant for twelve years. In 1862, the Law Department was revived under Judge James Hutchinson Graham, a graduate of the College. He served as Professor of Law until his death in 1882. For eight years after the death of Judge Graham the Law Department was inactive, and it was never reorganized.

In 1890, the present Dickinson School of Law was chartered by the courts as an independent corporation. This was through the active efforts of Dr. William Trickett and Judge Wilbur F. Sadler. Its first Dean was the exceptionally able Dr. Trickett, who had formerly been Professor of Modern Languages in the College; he left his college duties to study law in Carlisle and became successful in its practice.

The task of Dr. Trickett and Judge Sadler was not an easy one. They not only had to overcome local prejudice, but had the more difficult task of starting the school with wholly inadequate facilities and a very much embarrassed treasury. This did not discourage these courageous gentlemen who believed in themselves and the future of the institution. Time has proven that their appraisement of the Law School's future was not built on an illusory dream. The Law School adopted the name of the College, and selected as its President, Dr. George Edward Reed, who, in the early days of its existence, lent his efforts toward building up the Law School, and placed behind the institution the moral support of the College.

The first classes were held in Emory Chapel. College students, as before, were privileged to elect courses in law. In the first year, 17 students enrolled in the Law School; in the second year, 35, and in the third, 50. Its growth has been constant from that time. The forty-six years of its existence have been years of progress and development, and many of its graduates today occupy high positions of honor. It might be added, in passing, that many law graduates have held judicial office since the founding of the College, three of whom were members of my class.

It is difficult for us, as graduates and students of a legal institution so brilliantly supported by tradition to realize that the law school, as a media of preparation for a legal career, is not an old institution in America. It is true that there were several law schools in existence in the early days of the Republic, and that there are many present institutions which can boast a history comparable to our own. But it has been only within the last few decades that the law school has replaced the system of preceptorship as the predominant method of legal education.

It has not been so long ago that every established attorney was in name, if not in fact, also an instructor. The system had many practical advantages, and

some of our most eminent jurists and practitioners of today received their training in law office experience under the guidance of a practicing attorney. There were many who doubted the advantages of formal law school education as opposed to the experience acquired by apprenticeship. The weaknesses of the preceptorship system were of course conceded by all. Under it, many were handicapped by their instructors, who were themselves frequently too busy or indifferent to properly educate their clerks. Too much stress was placed upon practice, and too little upon an understanding of the substantive and philosophic aspects of the law.

It is unnecessary for me to demonstrate the manner in which the law school system has answered all of the arguments of its opponents, raised the morale and calibre of the bench and bar, and contributed to the science of the law. Such a result was an inevitable consequence of the substitution of expert and specialized instruction for self-teaching and inexpert guidance. Few law office students were so fortunate as to obtain preceptors comparable to the personnel of the modern law school faculty, of which our own is a splendid example.

But although the Law School has accomplished much in the substantive field of the law, it is at present confronted with the solution of a problem which is becoming constantly more acute and alarming in the profession. The subject I refer to, is, of course, the overcrowding of the bar. There is little doubt in the minds of practicing attorneys, judges and teachers of the law, that the profession in general, and our own bar in particular, is overcrowded. The problem is often presented from an economic standpoint, and the situation in that respect is sufficient to alarm all lawyers, old and young. To remedy this, here and there bar associations have appointed committees to secure work for needy lawyers. Nevertheless, it seems to me, to present an even more ominous, if less pressing, aspect in its relation to professional morale. Overcrowding can become, if it is not now, a materialistic justification for the lowering of our standards of legal ethics. In any profession or occupation in which the supply of practitioners exceeds the demand for services there must be those who, from economic necessity or moral weakness, resort to conduct and practices not consistent with the dignity and ethical code of the profession.

The problem is one which has received the earnest attention of our Bar Associations and professional organizations, and many solutions have been proposed. I cannot help feeling, however, that the only solution which can approach an equitable result is one which contemplates the close cooperation of the law schools with the bar. The law schools are, of course, vitally concerned, for they are the conduit through which the tide is pouring, and they are the expounders of the ethical concepts which it is the duty of the Bar Associations and judiciary to foster and enforce.

The solution does not lie in barring from practice those who have, by a hard course of study, with the promise of equal opportunity, achieved the qualifications for admission to practice. Such course would be opposed to our traditions which afford equal opportunity to those who meet the tests. Nor does it lie at the extreme end of the journey in the examinations for admission. Nor do I believe that the answer lies in a passive reliance upon the survival of the fittest and the crushing out of the unfit by economic necessity. The solution, it seems to me, lies at the source of the difficulty, rather than at a later stage.

It is in this approach that the law schools must play the principal part and bear the greatest burden. They must become warders of the gates of the profession to bar the unfit, the trifling, the unethical, and the unwise. They must perfect a more stringent selection of students in fairness not only to the profession but to the students themselves. There are numberless young men in law schools today, or at the bar, whose abilities are unquestionably directed toward other fields of endeavor, in which they could enjoy a success far greater than will attend their efforts in our profession, and whose diversion to other fields would have relieved much of the congestion. The problem is not merely one of scholastic aptitude which is capable of solution by curricular reform or more severe examination. It is a problem of personal and individual character study and analysis.

The law school must be prepared to make a more searching inquiry of applicants for admission to discover the presence or absence of the qualities and attributes other than scholastic of each individual. It must be prepared to enter upon a more constant supervision of the moral development of the men whom it prepares for the profession. I am sensible, of course, to the obvious difficulty of proper analysis of character and ability at so early a stage in the course of preparation, and I know that many mistakes must be made. It would be difficult, however, to find a group more capable of undertaking such serious responsibilities than the teachers of our law schools. For the errors that are bound to be made the remedy lies in the organized bar and its examiners and censors. They must share in the responsibility and carry on the work of the law schools by eliminating those who may have escaped elimination in the process of selection, but who lack the necessary professional qualities. In this task the bench must also share, and must encourage and support the organized bar in its efforts toward self-correction. Such a triple alliance of educators, bench and bar, acting in close harmony and under a well-defined plan, could, aided by the operation of ordinary economic forces, accomplish all that could be desired. Acting separately, they must fail.

The principal obstruction to the inauguration of such a program is, unfortunately, financial. The law schools have borne with other educational institutions the crushing burden of the recent depression, and have been compelled, in order to survive, to relax reluctantly the process of selection. This difficulty can only be overcome by a revival of general economic conditions, and public spirited endow-

ments and assistance. It presupposes educational institutions sufficiently independent to contract the size of their classes to include only the group most needed to keep fresh the life-blood of the profession. Nevertheless this suggestion is not presented here as an unattainable ideal, greatly to be desired, but not to be striven for. I hope that there will be immediate and thoughtful efforts to commence the slow process of rectification, and feel confident that the three groups essential to its perfection will eagerly cooperate. Much can be accomplished if but a partial movement in this direction is presently undertaken. Certainly the crisis is sufficiently acute to demand instant attention, and the object to be accomplished is worthy of all the serious thought which each of us can devote to its accomplishment.

And now, my friends, in closing I wish to express to you my sincere thanks for your remarkable tribute. I feel it keenly and I wish to thank the Governor of the Commonwealth for so generously giving of his time to participate in Dickinson's tribute to one of her sons. It is an act which I will long remember. May I also include in this expression our former Chief Justice Robert von Moschzisker and the Attorney General of the State, Charles J. Margiotti; and may I speak my hope, and more, my faith in a long and notable life for Dickinson Law School.

John W. Kephart