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STANDARDS OF LEGAL EDUCATION

MERTON LEROY FERSON*

I congratulate you, gentlemen of the Bar of North Carolina, not merely because you are lawyers, but also because you are in the prime of your service at this particular time and in this great State. You are carrying our profession into a new era. Commercial and industrial conditions have changed, but a change of even greater importance to us is taking place within the profession itself. The Bar has awakened to its responsibility and opportunity. The persistent criticism that our administration of justice is slow, costly and uneven has gotten under our skin. And the presence in the Bar of *some* members who engage in the trade of exploiting, rather than the profession of serving is now perceived as a reproach to our entire body. In the figurative language of Senator Root, we have come to realize that "you cannot have too many rotten spots in an apple and have the rest of it good." This generation of lawyers has undertaken the task of putting our house in order.

The new conception of our responsibility appears in definite movements now under way. I would instance the work of the American Law Institute, that of our own North Carolina Judicial Conference, and the beginnings that have been made towards standardizing the requirements for admission to the Bar.

Lawyers have told one another from time immemorial what a noble and learned lot we are, and our system of law has been extolled as "the perfection of reason." We lawyers were gullible enough, in our conceit, to swallow such blandishments and dote upon them for one hundred years. But this fatuous praise of law and lawyers we have been feeding each other has given way. A candid introspection has taken place and has revealed that, while our system of law is an excellent one, there is still a great deal of room to improve both the personnel of our profession and the laws we administer. Two national movements now under way are of importance in themselves and of still greater importance in manifesting the spirit and determination of the bar to measure up to the

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work it has to do. One of these is the formation and activity of the American Law Institute. This movement is aimed to improve the law itself. The truth is that, in spite of our praise, the law is on many questions uncertain, inconsistent and verbose. The Institute is attempting to restate the law on most of the leading subjects. The income from a fund which exceeds a million dollars has been placed at the disposal of the Institute. The best talent available has been procured. It is engaged in what is perhaps the largest undertaking of its kind in all history. Certainly nothing comparable to this task has been accomplished since the time of Justinian. It bids fair to work considerable improvement in our law and signifies clearly something more than a selfish interest on the part of lawyers.

The other movement I have referred to is aimed at the improvement of lawyers as a class. The personnel of the legal profession has included many of the greatest characters in history and now includes some of the greatest men of our time; but candor compels us to admit that it has also included, and still includes, persons who are no credit to our profession and would be no credit to any profession or occupation. The conspicuous blunders of some men at the Bar who lack character are a reproach to the entire profession. A movement that is aimed gradually to purge our Bar of dishonest and incapable men is under way in this State and in this nation. A doctrine of our North Carolina Supreme Court, lately reiterated, is phrased as follows: "The public policy of our State has always been to admit no person to the practice of the law unless he possessed an upright moral character." Our Chief Justice has aptly said that our profession "is neither a place of refuge nor a reformatory for those who have stumbled in other fields." The same decision points out the extraordinary responsibilities of the lawyer. The client unburdens to his lawyer "his whole life, his business secrets and difficulties, his family relationships and quarrels and the skeletons in his closet. To him he often commits the duty of saving his life, of protecting his good name, of safeguarding his property, or regaining for him his liberty." A man without ability or training who brazenly presumes to represent another in such important matters is a menace. The American Bar Association itself has taken a hand in this matter. It has gone at it earnestly. It is determined that the law schools of this country shall provide adequate education for young men coming to the Bar. It has to this end indicated certain

standards for law schools and classified them according to their conformity to such standards. Class A includes all schools which fully conform. Class B includes those schools having definite arrangements to conform in the near future, and another class is made up of all other schools. The two chief requirements are that a law school require two years of college work as a prerequisite for admission and shall require at least three years of law study for graduation. The further recommendation is made that men should not be admitted to the Bar until they shall have had two years of academic training and studied law thereafter for three years. The movement is still new, but sixty law schools and the bar examiners in some states already conform to the entire program. More than two-thirds of the states require three full years of law study before one is admitted to the Bar.

This program for coming to the Bar extends through a period of five years. It seems a long and difficult road. One, with a spark of sympathy in his makeup, thinks of boys who have small means and yet hope to come to the Bar. The argument has been advanced that it tends to make the profession an aristocracy. There is enough truth in such arguments that the question should not be taken lightly. It deserves to be considered thoughtfully as well as sentimentally.

Two interests are to be regarded as men are admitted to the Bar. First, what does the interest of the public dictate? These are questions that you of the Bar and we law teachers must work out together. They are questions that have little to do with the Bar of today but have much to do with the Bar of fifteen years from now. You and I had perhaps only a two years law course before we were admitted to the Bar. An earlier generation had less. We are here for better or worse. Our status is settled and there is no point in discussing whether we ought or ought not to have been admitted. I am talking about the educational requirements of men who will come to the Bar in the future, none of whom will be in their prime for fifteen years yet. What do the best interests of society, and of those men, require?

The public has a larger and more direct interest in our profession than we sometimes realize. When men of other occupations bungle their work it of course injures their employers but does not affect others. When the shoemaker leaves a nail in A's shoe it doesn't hurt B. When the dentist awkwardly drills into A's nerve it doesn't

hurt B. When the physician gives A a wrong remedy it doesn't give B the stomach-ache. But when a lawyer undertakes to serve A the public is concerned. The harm that ignorant lawyers are doing is not as easy to point out as the harm being done by ignorant physicians, but it is probably as serious and surely as prevalent. A man's life and health are the sacred charges of our physicians. Even these are of small avail unless his liberty and other rights be kept sacred by our lawyers. The work of our profession affects not our clients but also the members of society who are not our clients. In the first place, our courts are complicated and expensive machines maintained by public funds to aid justice. A bungling lawyer has no more right to tamper with that machine than an unfit seaman has to sail a public ship. In another respect the public is deeply interested. You know, according to the doctrine of judicial precedent, the decision in a case not merely determines the rights of the parties thereto, but it becomes a pattern for the future. The theory may be that the court, guided by lawyers, is finding ready-made law in every case. The *truth* is that in cases of novel impression they are making law. In the trial of such a case the lawyer is not merely dealing with the rights of his client; he and the judge are working out a rule that will be wholesome or otherwise in its effect upon society. Commerce is guided along lines the lawyers establish just as traffic is guided by established lines. A lawyer who is unable to see the ultimate effect of a decision or unable to present to a court the functional merit of a rule is a menace to the commercial world. This great state in its marvelous development needs lawyers able to take the role of social engineers. The State is deeply concerned in having a competent Bar. "No one," says Chief Justice Taft, "can sit in a court of justice and not realize how society suffers, how injustice is done that cannot be remedied through the ignorance and blundering of men who have acquired the right to practice law. The interests of the people demand that legislation and those charged with legal education shall put up the bars against accepting candidates inadequately prepared."

What does the interest of the individual who knocks for admission to the Bar demand? He has turned to law for his life work. He hopes to succeed. He wants to be happy in his work, prosperous and useful. He has turned away from a hundred other occupations that he might have followed. What does the best interest of that

individual man require of us? The answer is clear. It may be read in the faces at the Bar in every county seat. You can read in those faces some stories of glowing success and some of dismal failure. You can see on one hand men who came to the Bar with abounding hope and confidence; but who, as the years rolled by, have been found wanting. They have become triflers and hangers-on. Their hope is fading. Their youth is gone. They may have assumed the duty of supporting a family. It is everlastingly too late for those men to enter and put their untrammelled enthusiasm into another occupation for which they were better adapted and prepared. You will see, on the other hand, men who have found in the legal profession a work of absorbing delight. They are trusted, honored and well paid.

The law student is on a road that may lead to either one of these extremes. The race is swift and the stake is large. If he lacks the taste, the ability or the energy to hold the pace and succeed, the sooner he finds it out the better it is for him. There is no kindness in coddling and coaching an unfit man into the profession. Our duty to the individual student requires thorough teaching and standards he cannot pass if he be lacking in the ability, energy, or education that a real lawyer should have.

There is an insistent and ever-growing demand for well trained lawyers. No profession offers a career so splendid as the legal profession offers to a well trained man. It is an honorable, interesting work, and an able lawyer is well paid. Benjamin Franklin said of lawyers, "They work hard, live well, and die poor." The time has come when they need not die poor. Some of the best lawyers in this State are said to make from fifteen thousand dollars to twenty thousand dollars a year. The possibilities of success are so splendid and the possibilities of failure so terrible in our profession that it is the part of kindness to require that all who enter shall be well prepared.

I have no statistics but believe it a conservative estimate that one-third of the men who come to the Bar drop out within a short time. Another one-third hang on indefinitely but never succeed. There is social waste and individual hardship in such a situation. The man who soon drops out has wasted time and money. The man who doggedly holds on as the years roll by, only to fail eventually, has wasted a life that might have been happy and useful. Of course, no amount of preparation will make success certain, and no lack of preparation

will make failure certain. In dealing with the future we can only deal with probabilities. As Chief Justice Taft has said, "The historical fact is pleaded that many great lawyers have honored the Bar and served well society, who, according to such standard, were unequipped for the study of the profession. But wise rules are not made by exceptions." We have had lawyers like Abraham Lincoln and Chief Justice Hoke who, without any formal training, became outstanding lawyers. They represent the exception, not the rule. Along with every Lincoln and Hoke many others began practice with a similar lack of preparation and failed. They are forgotten. Such men as Lincoln and Hoke are like the occasional stalk of corn that springs up in a barnyard where, without cultivation or attention, it becomes a sturdy and towering plant. The prudent farmer, however, does not depend on such exceptional volunteers for his crop. The Bar cannot depend for its recruits on such rare instances. The Lincolns and Hokes of our day are procuring thorough preparation. It is not such as they who quail before educational requirements. Conditions have changed since the days of Lincoln. It is said that only three of our present law schools were in existence when Lincoln came to the Bar. Mark the contrast afforded by conditions in North Carolina today. We have excellent colleges and law schools already, and the prospects are that North Carolina will within a few years be as distinguished for her colleges and law schools as the old geographies said she was for tar, pitch, turpentine and lumber. The facilities are at hand and a boy who has energy enough to become a lawyer can work his way through school. An investigation shows that sixty per cent of the men coming to the Bar in Illinois earned their way and that a remaining twenty-six per cent earned a part of their way through law school, and only fourteen per cent have their way entirely paid by others. It is more apt to be the lazy and unfit man who quails before higher educational requirements than it is the man of small means. Such a man should be protected against his folly. If he lacks the taste, the ability or the energy to hold the pace, the sooner he finds it out and turns to another occupation the better it will be for all concerned.

There is a catchy argument afloat—that every boy should have a chance; that if he is unfit he will be eliminated anyway by the competition he meets. This argument proceeds from the same shortsighted kindness as would admit a boy to deep water before he can swim. The admission of an unfit boy is a cruel injustice to him. By

the time such an unfortunate boy has been finally eliminated he will be of middle age, his spirit broken, and a life that might have been useful will have been ruined.

This State has always been noted for its distinguished judges and for its distinguished Bar, and I have no misgivings but that it will keep step in this national movement by carrying its moral and educational standards still further. I have an abiding conviction that the Bar of North Carolina will be maintained on a plane that will make it a continuing credit to the great state it serves.