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Are Evening Law Schools Better Than Day Schools?

William Samore*

IN THE FIELD OF LEGAL EDUCATION, there long has been a certain myth—the myth of the natural superiority of day law schools over evening law schools. It is a little surprising when some law teachers, eminently rational in the classroom, utter unfounded statements on some other subjects, such as the relative merits of day and evening law study. Uninhibited by any troublesome factual knowledge, they speak with seeming assurance about any or all aspects of it.

Clearly *not* guilty of this aberration is the Very Reverend Joseph T. Tinnelly, C.M., Dean of Saint John's University School of Law of Brooklyn, New York. His book *Part-Time Legal Education* (Foundation Press, Inc., Brooklyn, 1957; 259 pp.) is, indeed, welcome. Firm in his support of adequate legal standards and in his understanding of the aspirations of evening law students, Father Tinnelly is convinced that *both* can be satisfied, without sacrifice of either. This book warns the prospective evening law school student of the rigors ahead, but it encourages him as well. For the faculty and administrators of evening law schools, this book will suggest solutions to some of their problems. But more importantly, this book should be dedicated to those who lack faith in evening legal education. Yet Dean Tinnelly's purpose is not primarily to convince these skeptics. He is primarily concerned with the problems faced by evening law schools, having early in the book concluded, and rightly so, that these schools are definitely a powerful force for positive good.

The most formidable opponents of evening law schools are some professors and administrators of member schools of the American Association of Law Schools. They seemed to be victorious in 1912, when the Association resolved not to admit part-time law schools to membership. However, ten years later, an amendment was adopted permitting qualified part-time law schools to become members. But the opposition was persistent. In 1955, a proposed amendment sought to bar from A. A. L. S.

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[*Editor's Note:* Having taught at the law school of the University of Nebraska, and Chicago-Kent Law School, as well as at Cleveland-Marshall (three different types of law schools), Professor Samore is peculiarly well-qualified to discuss the subject of this article.]

membership any school that was not an integral part of an accredited university. This was a hardly disguised blow against part-time law schools. The great majority of the member schools voted down the proposed amendment. Finally, in 1957, in a more direct attack, there was proposed an amendment that would have barred all part-time law schools from membership. This proposal was neither approved nor defeated, but tabled for future disposition.

It is a credit to legal educators that only some of them are opposed to part-time legal education. However, this opposition, it is believed, has created the myth of day-time law school superiority. It is time to destroy this myth—for myth it is—and to establish the fact that some evening law schools are not only performing creditably, but are even better than some day schools.

Anyone urging the non-membership of evening law schools must, it seems, begin with a premise that there are some *inherent* evils in part-time legal education.

It is usually argued that a part-time faculty cannot teach law properly. Typically composed of judges or of practicing lawyers who are chiefly concerned with their main profession, such faculties are said not to have the time, nor the correct mental attitude to be successful teachers. Assuming this to be the case (though not conceding it), the answer is simply to establish a full-time faculty in a part-time school. And in fact, today, many evening law schools *do* have a full-time faculty, supplemented by part-time specialist instructors from the practicing profession.

If part-time teachers cannot perform adequately, then logically *all* teachers should be full-time. Yet it is well known that the very law schools objecting to evening law schools also have part-time faculty members, sometimes euphemistically called *Lecturer in Law* or *Adjunct Professor* or *Instructor*. Of course, though, to say that full-time schools are guilty of the same practice, in a smaller degree, is hardly a complete answer. But we bluntly question the conclusion that a part-time professor is of necessity inadequately prepared. For one thing, he can be restricted to teaching one course. Furthermore, the course he teaches is, more often than not, his specialty in practice. There is a widespread tendency today to increase practical training in the law schools, in order to give proper emphasis to the practical as well as to the theoretical. All this is not to say that there should be no full-time professors. Quite the contrary. There

should be a minimum full-time faculty teaching the basic courses, supplemented by part-time professors with practical experience in the courses they teach.

Another alleged evil of evening law schools is that they are proprietary, with profit-making the primary motive rather than the object of training students to become lawyers. A justified objection, when true; but must an evening law school necessarily be proprietary? If the question does not answer itself, this fact will: The American Bar Association has fully accredited thirty-five multiple-division and six part-time law schools, and has provisionally approved two multiple-division and three part-time schools. The A. B. A. Standards prohibit approval of a school operated as a commercial enterprise. The Association of American Law Schools itself has admitted to membership one part-time law school and twenty-nine multiple-division law schools.

The charges become more sweeping and more serious: graduates of evening law schools are said to be the ones primarily responsible for low ethical practices in the profession. Even if we should assume statistics to show that a greater percentage of evening graduates are disbarred than is true of the percentage of full-time graduates, what would it prove? Do we abolish a worthwhile office because one of its holders is corrupt? Shall we close all evening law schools in order to inhibit the dishonest few, thereby frustrating the vast majority of honest aspirants? This is the puerile tactic of the teacher who punishes the entire class for the insubordination of a few.

In other words, it is the dishonest individual who is to blame, rather than the school from which he came. Would there have been a mystical change had the unethical evening graduate attended a full-time school? No one has the temerity to insinuate that evening law schools give instruction on shady practices. Some of the recognized great law schools have no formal course at all in legal ethics, whereas many of the evening schools do. Is it seriously argued that day students are made of finer clay? No school, day or evening, should be held accountable for the unethical practices of a graduate.

Also often heard is the argument that too many graduates means great competition and that this encourages ethical violations—as though the elimination of competition will make all men saints! The solution, this argument continues, is to reduce the number of law graduates. How is this to be accomplished? Why, close the evening law schools, of course! A most con-

venient scapegoat! If the argument were correct, it would be a far more effective, albeit equally unjust, solution, to decimate the ranks of full-time students. If the argument is correct, the "desired" reduction in the number of graduates could be accomplished much better by raising the standards of admission in *all* law schools, by stricter grading, and perhaps by limiting bar examinations to those who intend to practice law as a full-time profession. That last suggestion, in all its denial of the whole philosophy of democratic society, has been rejected too often to merit further discussion here. It is enough to say that the law exists for the people, and not the people for the initiates of the law. If too many lawyers practice their profession on a part-time basis, that is a problem for the courts and the bar association, not for the law schools to solve.

Evening law school critics point to alleged insufficiencies of plant, small classrooms, inadequate library, low admission standards, and leniency in grading. Granted that there should be a sufficient plant, an adequate library, high standards of admission, and fortitude in grading, again the answer is that some evening schools can and do meet these requirements better than some day schools. These schools are no more inherently bad than full-time schools are inherently good.

At this point, some supporters of the A. A. L. S. amendment which seeks to bar part-time law schools may protest: "We are not critical of all evening law schools, only of some." But the amendment itself makes no exceptions: ". . . No school shall be acceptable for admission if it operates wholly or partially as a part-time school." Strangely enough, if the amendment had been adopted, those part-time and multiple-division schools already members would remain full members of the Association, though half-condemned and half-approved.

So far, none of the alleged defects can be found to be inherent in part-time legal education. The only criticism that is fairly *characteristic* of part-time legal education is that the students do not devote full time to the study of law. This fact, obviously, cannot be denied. It is true by definition. According to the Standards of the A. A. L. S. (VIII-2), a part-time school is one where the work does not require substantially the student's full working time.

The objection is that the study of law requires the student's full time. It is no superficial answer to point to the undeniable fact that thousands of evening graduates have passed the bar

(in some cases, with a greater successful percentage than full-time graduates) and have become successful attorneys; many becoming outstanding practitioners and judges. But this objection deserves a more detailed answer.

If this objection were the underlying reason for the tabled amendment to the A. A. L. S. Constitution, the amendment did not go far enough. Many full-time students are full-time in name only. They work part-time or full-time at other jobs. To be complete, the amendment should have required full-time schools to police the out-of-school-life of their students. Perhaps an oath by the students would suffice; or if they cannot be trusted, classes should be scheduled for all afternoons and Saturdays, and even for Sundays. Better still, why not schedule classes for both day *and* evening hours! Make it foolproof by requiring the student to check in at the dean's office every hour between classes.

Perhaps such drastic measures are not necessary in order to assure full-time study. The full-time schedule is said to be so tough that a student must devote his full time to law in order to pass the examinations. If this is so, then why are some full-time schools scheduling classes in the afternoon and Saturday? If the schedule were really so tough, this measure would not be necessary. Moreover, how was it possible for so many full-time students to be graduated before the introduction of these classes?

It must be admitted that, ideally, the more time a student spends studying the law, the better lawyer he should be; the typical evening student should be better off as a full-time student. To admit this is not to admit that evening law schools are necessarily inadequate. In essence, the real issue is not the comparative merits of part-time and full-time legal education, but whether or not part-time legal education can properly train students to become good lawyers. The answer clearly is that they can and do. If comparisons must be made, some evening law schools long have been accomplishing this objective with greater success than some day schools.

Aside from meeting all the requirements of library, faculty, facilities, admission and attrition policies, and so forth, there are peculiar features of evening law schools that not only tend to compensate for the lack of full-time study, but may go beyond mere compensation to the point of being advantageous.

The first factor is that it takes four years to graduate from a part-time school; not three years as in a full-time school. If it be argued that the full-time schedule is heavy enough to require the student's full time, then it must be admitted that full

time would not be necessary if the course load were lightened. And this is what happens in part-time school. There, the student is less burdened with the number of semester hours taken at any one time, yet the load is great enough to give him a sense of relationship among the various courses.

Next is the character of the student body in a part-time school. The typical student is older, married, and often already a parent. Many are experienced in some other business or profession. Included are engineers, physicians, accountants, financiers, and business executives. In a word, he is more mature than the day school student.

He is also a better student because of motivation and incentive. He is paying for his education with his own money. Failure, to him, is utter disaster. And because of the very fact that time is limited, he makes better use of it, studying with greater efficiency. Part-time students eat, drink, and live law generally with as much, if not more, gusto and exuberance than do day-time students.

To be sure, it would be ideal to grant financial scholarships to all qualified applicants, so that all could devote full-time to law study. But this is sugar-coating the pill. The fact is there is not enough money to go around. And if the full-time schools hope (as they have for so many years) to raise sufficient funds in the future, what are the ambitious to do meanwhile?

There are many capable persons who are in the unfortunate position of having to work while learning. Law-trained men are leaders in politics; they are administrators, legislators, executives, and judges. As private citizens, they exert vast influence. As practicing lawyers, they help to shape the course of law. The legal profession certainly should not be limited to those whose parents are rich enough to foot the bill for admission into it. Such leadership should be composed of elements rising from every social and economic group.

This is not to say that the conferring of a law degree is viewed as a right or that standards should be lowered to accomplish a deserving purpose. It is the *opportunity* to earn the degree that should be available to all in our society, but the degree must be earned by all in a school that meets the requisite standards of legal education.

Graduates of part-time schools would do well to avoid a defensive attitude. There is no need for them to continually,

without occasion, proclaim the virtues of part-time legal education. A listener may say to himself: "Methinks they protest too much." A chip-on-the-shoulder attitude may suggest a feeling of inferiority when in fact there is no inferiority. So, too, crowing over merited honors is sophomoric, and accolades should be accepted in quiet stride.

It is recognized that there are advantages in accreditation by the Association of American Law Schools. The A. A. L. S. does seek to further quality standards, public confidence, adequate legal training, and recognition of credits and diplomas by other member schools, prospective employers, and bar examiners.

There is nothing wrong with striving to enter a worthy organization, but it is foolish to hammer on the door. And it is still more foolish to lock the door to worthy applicants. Exclusion from Association membership will not seriously harm them; rather it may harm the Association. Many part-time schools do maintain high standards and are very secure in their positions. Their strength lies in the very fact that they *are* part-time, offering opportunity to the many who must earn by their labors the betterment they seek.