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Facts and Fictions About Evening Law Schools

Howard L. Oleck*

“THE LEGAL PROFESSION is the only learned profession which allows part-time completion of its professional, educational requirements.” So stated the Report of the Special Committee on Part-Time Legal Education to the December, 1961, annual meeting of the Association of American Law Schools.

This report was devoted to the statement of a *Prospectus* which is to be used by the Special Committee for the purpose of obtaining foundation support of its proposed study of part-time legal education. For the first time, there is planned a thoroughgoing study of the *facts* about part-time legal education—its nature, weaknesses and strengths—as a sound basis for objective evaluation. Part-time legal education, more specifically, means evening law schools.

As the report said: “For present purposes, simply let it be stated that the question is continually being raised as to whether a part-time law school can give, and whether those in existence do give, adequate legal education.”

The critics of evening law schools have argued that the problems of such schools far outweigh their advantages. They say that serious matters of fatigue and lack of dedication to the law are endemic in evening law schools. They say too that many evening schools, over-all, turn out an inferior legal product. Most of the criticism of evening law schools seems to emanate from day school people.

Supporters of evening law schools say that it is important in a free society to have lawyers who come to the profession from differing social backgrounds. They acknowledge the problem of fatigue, but point out that many thousands of fine law students have overcome this handicap and have become fine lawyers despite the fact that they obtained their law schooling “the hard way.” Fatigue is a problem in any school, day or evening. They point out that the four-year evening program is equivalent in class and study time to the three-year day program, and has the advantage of more time for intellectual digestion. They also point to the distinctly greater maturity and experience of evening students, as well as their high degree of motivation to do

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well; failure is at their own expense, not the expense of daddy. Such students also are said to infuse knowledge of other professions and occupations into the legal profession, as evening students so often already are people of some achievement before they enter law school. And supporters of evening law schools argue that the faculties who teach day or evening classes are much alike, in fact being the same professors in most schools.

In any event, perhaps one-third of all law students today attend evening schools. It is said that most of these students would never attend day law school, which often could be done only at the price of job, marriage, family, and boredom with years more of a collegiate atmosphere of which they already have had enough.

Parenthetically, one must feel a sense of disquiet in noting that the prospectus of the Special Committee of the Association of American Law Schools asks: "Is a background of poverty of significant value to the legal profession for at least some of its members? Should any person no matter how poor be entitled to become a lawyer provided he is intellectually and morally capable?" This may be merely unfortunate choice of language in the prospectus, but it is disturbing in its intimations. Reassurance is found in the fact that a highly competent and objective scholar has been selected to head the study.

Carthage Must be Destroyed, and Never Mind Exactly Why

Some of the critics of evening law schools have become well known in law school circles chiefly because of the vehemence of their attacks on evening law schools. Some of them seem to be almost fanatic on the subject. They bring to mind Cato's forerunner of modern advertising's use of repetition as the most effective technique of propaganda. Carthage must be destroyed. Repeat that often enough and many people will believe it without stopping to ask if it is true. Carthage must be destroyed, and never mind exactly why. The surprising thing is that precisely that kind of propaganda has had remarkably strong effect upon many lawyers and law professors.

Here we are with the first full scale investigation of the real facts about part-time legal education not yet even begun—only in the planning stage. But firm opinions pro and con have existed for lo these many years—upon what basis other than guess, hunch, feel, or pure conjecture? Not upon the basis of

sound factual knowledge, because the facts are yet to be gathered.

The only substantial collection of any statistical facts about part-time legal education, Father Tinnelly's celebrated book, *Part-Time Legal Education* (Foundation Press, 1957), does not pretend to be exhaustive and concludes in favor of part-time legal education. The most recent compilation of statistical data on one aspect of this subject is the survey of comparative legal aptitude test scores recently made by Dean John Hervey, the Advisor to the American Bar Association Section of Legal Education. It reveals a general superiority of evening law students over day law students in the vital matter of comparative legal aptitude test scores. Yet the critics of evening law schools have been with us for years, vocal out of all proportion to their numbers, and obviously not speaking on any basis of clear factual knowledge.

It may well be asked whether it is true at all that part-time education is found only in the legal profession, among all the professions. We assume that the Special Committee did not state that to be the fact without first thoroughly investigating. Yet one surely knows, of one's own experience, of a number of students in schools of engineering, dentistry, and even medicine, who do work at least part-time in addition to attending professional school. It is an open secret that many students in many day law schools hold down outside employment while attending law school. This fact is mentioned, if at all, by day law school critics of evening law schools, usually only as an opening gambit leading to the plea for more money and more scholarships which supposedly will obviate the need for any student to work while attending law school.

Implicit in the question of evening legal education, and of standards appropriate to that and to full-time legal education, is another problem that heretofore has received almost no attention from the legal profession. It was dramatically introduced at the December, 1961 meeting of the Association of American Law Schools.

Is Legal Education Being Standardized to Death?

Soia Mentschikoff, of the University of Chicago Law School, introduced a resolution that a committee be appointed by the association to study whether or not the association has gone too

far in its worship of "standards". She said in effect that the constant multiplication of standards for law school operation may be literally regulating legal education to death.

When the debate grew heated, the president of the Association of American Law Schools called for a vote on her motion. It was expected that this vote would in effect shout her down as not worthy of serious consideration. But the voting disclosed an unexpected reaction among the majority of the professors and deans present. Her motion was carried. A committee was to be appointed to study whether or not legal education is being standardized to death.

This is most revealing, and may have far reaching consequences. Heretofore the standardizers and the critics of independent thought as to what is good legal education have pretty much had things their own way. Apparently the majority of the law deans and professors secretly have had doubts about this unchecked influence. The results of the committee's study will be most interesting.

The study of the Association of American Law Schools' Special Committee on Part-Time Legal Education will not bear fruit for several years at least. So far (as this Review goes to press) the Special Committee has only developed a prospectus with which to seek foundation funds. It is even possible that the Special Committee will not be able to obtain such funds, in which case one can only speculate as to when the statistical fact picture about part-time legal education actually will be available.

It will be said by some that the writer necessarily is prejudiced in favor of part-time legal education. After all, he does teach at an evening school now, and taught at a multiple division school in the past. If this is a valid criticism, why does nobody complain of prejudice in favor of day law schools on the part of day law school teachers who scoff at evening law schools? If it be granted that at least some day school men are unprejudiced, it must also be granted that some evening school men are unprejudiced. The writer claims to be unprejudiced.

It is sad to think that any law professor would voice an opinion based on ignorance or on self-serving motives. Yet, it must be suspected that this may happen. Sometimes an evening school man may complain of day school critics because of envy of their fancied superior status. Sometimes a day school man's criticism of evening schools may be based on fear of a competitor who outdoes him despite handicaps in the competition.

The Prospectus of the Special Committee breaks down the inquiry about part-time legal education into four separate lines of investigation: First is the nature of the part-time schools themselves. Second is an evaluation of the nature and quality of the faculties of the schools. Third is the nature and quality of the student bodies. And finally there is to be a study of the roles the graduates of part-time schools play in the legal profession.

The writer is content to follow the Special Committee's analysis of the nature of the inquiry to be made. He does not pretend to omniscience, nor to be able to guess what facts the Committee's investigation will reveal. However, from his own experience and from what he has seen in a number of day and evening law schools, he will essay to predict some of the probable answers to the questions posed in the prospectus by the Special Committee.

The Nature of Part-Time Law Schools

The Special Committee says that a fundamental inquiry is whether part-time schools as a group are characterized by significant differences in the nature of their organization which might raise the possibility that such schools find it more difficult to give a first-class legal education. Of course the same question might be asked of many day schools, except that nobody asks it.

Specifically, the Special Committee asks whether the financial problems of part-time schools are more serious than those of full-time schools, thus tending to minimal compliance with standards of accreditation. There are rich schools and there are poor schools among evening as well as among day law schools. For example, one evening school known to the writer, an independent law school, is one of the financially soundest schools in the nation. Moreover, the part-time school usually seems to be able to live on its tuition charges far more often than is true of full-time schools. This sometimes is characterized as "a gate receipts operation," with the implication that this is necessarily unsound. Is it better to have the income of the law school drained off to support a medical school in the university? Is it impossible for evening law schools to obtain grants and endowments as do day law schools?

At least in some evening law schools their adequacy in

terms of library acquisitions, secretarial help, law review budget, office space for faculty and the like, is distinctly superior to that of some day schools.

A number of evening law schools are superior to some day schools in the adequacy of the range of elective courses, not all of which are designed simply to enable one to pass the bar examination. But, available statistics on these matters are not adequate to permit any over-all conclusion.

The Committee asks what size community is necessary in order to give adequate support to part-time legal education. Of course the very same question can be asked of full-time legal education. Undoubtedly the big schools usually are to be found in the big cities.

The reputation of some evening law schools in their local communities, including the reputation among practicing lawyers and judges, sometimes is higher than that of day law schools in the same communities. It is well known, however, that some law teachers feel that any day law school is somehow *per se* superior to any evening law school. This feeling, in the opinion of the writer, is utterly unjustified. There is more than one community in this nation where an evening law school has the wholehearted respect and affection of the community that it serves, while in the same community the day law school is viewed as something of a country club for the sons of the rich.

Whether critics of evening legal education like it or not, the "plowboy to president" idea is not yet dead in the United States. Most Americans still think that the "Abraham Lincoln tradition" is a good thing and worth keeping. In their minds the evening law school is more directly in that tradition today than is the day law school. The truth is that the evening law school literally keeps alive the possibility that a poor man as well as a rich man may realistically aspire to the highest posts in the nation.

Debate has not yet ended, in this connection, about another issue long ignored by most law school people. That is the question of whether or not they are justified in viewing law schooling itself as the sole proper route of entrance into the legal profession. In some states, an aspirant may still "read law" in a lawyer's office in preparation for the bar examinations. This method produced men of the caliber of Marshall, Lincoln, and a host of others whose professional quality was beyond question. There are many top-flight lawyers and judges active today who came

to the profession by "reading law". And there are many lawyers and law professors who gravely doubt that the transition to law school attendance as a *sine qua non* really has improved the legal profession. Granting that standards for admission to the bar should be higher today than they were in the past, this does not justify the closing of all but one door to the profession.

It is unsound to assume first that law schooling is the only proper avenue to the legal profession, and then, that only day law schooling is acceptable schooling. This is, indeed, the piling of one assumption on another. After all, law schooling is only one of the possible introductions to the profession of law.

The Part-Time Law Teacher

The Special Committee admits that little actually is known of the part-time teacher as he relates to part-time legal education. Yet, almost every law school has at least some part-time teachers. But it is agreed that a core of full-time faculty members is essential to effective legal education, and approved evening law schools do have such a core of full-time teachers.

One of the criteria used in defining a competent law teacher is "responsible participation in group deliberative processes of the law faculty". This criterion applies with equal force both to day and evening schools. When the prospectus of the Special Committee says that there may be a significant lack of such participation on the part of part-time faculty members, it should be noted that this supposition would apply with equal force to day and evening law schools. As a matter of fact, experience indicates that the participation of part-time law teachers in faculty deliberations probably is greater in evening law schools than in day law schools. Nor can it be seriously argued that the use of part-time specialists for specific courses should be abolished. Practitioners who teach special courses, in which they have special competence, definitely are assets to any law school.

The question of the pay of part-time teachers in evening law schools, as against their pay in day law schools, simply is not known statistically. Practically all law teachers are agreed that all law teachers, especially full-time law teachers, should be paid more than they are.

As to whether or not there is effective interaction among full-time and part-time faculty members of an evening law

school, the answer is that in many cases there is. In some evening law schools the part-time teachers are notably enthusiastic and active in faculty discussions.

Whether or not there are ascertainable differences in the quality of teaching of part-time teachers as opposed to full-time teachers is a question that mere statistics cannot answer accurately. Some part-time teachers are excellent instructors, and some full-time teachers are poor instructors. Many people believe that a truly good teacher is born rather than made. If this is so then one should expect to find as high a proportion of good part-time teachers as of good full-time teachers.

Part-time teachers in some law schools participate actively in curriculum planning, prepare original teaching materials, and in many ways make themselves very valuable indeed to their schools and to their students.

In any event the value of part-time teachers probably is as much a question, if it is a question at all, in day schools as it is in evening schools. It ill becomes full-time professors to assume that because they are full-time professors, they necessarily are excellent teachers.

The Part-Time Student

As has been remarked above, and as the Special Committee itself recognizes, the problem of the working student is not limited to the part-time school. Some of the questions asked by the Special Committee about part-time students are confusing. Thus the Committee asks whether he is "willing to make the sacrifices involved in holding a full-time job in order to become a lawyer only as a means of improving his own economic potential or social status?" This question can as well be put to the full-time law student and his sacrifices in carrying on his studies.

It is to be noted that the prospectus makes conspicuous by their absence some very pertinent aspects of the nature of evening law students. Apparently no inquiry is to be made into such matters as the effects of the higher legal aptitude of evening law students, of greater maturity, their greater experience and worldly wisdom, their surfeit with collegiate atmosphere, their longer period of law study, and so forth.

It is questioned in the prospectus whether there is effective interaction among students of evening schools. Experience in at least some evening schools has shown that there is highly

effective moot court work, law review work, student government, and other interaction.

Students in evening schools informally engage in discussions among themselves and with faculty members about questions raised in class with a vivacity and depth of interest that compares favorably with such discussions anywhere. It is wrong simply to assume that a feeling of "dedication to the law" is in any degree less among students of evening schools than among students of day schools.

As to the attrition rate of students in day and evening law schools, there is hardly any doubt that the attrition rate in the latter is higher. Many evening students drop out of their own accord, before the axe falls, as they find that they have taken on more than they can handle in pursuing part-time law schooling. The causes of differences in rates of attrition as between the two types of schools are largely conjectural. They must necessarily vary with the individual problems of the individual students.

It has often been implied that there is a significant difference in the ethical standards of the evening law student as compared with the day student. On what statistics this implication is based nobody knows. It seems to any fair observer that only God knows the ethical standards of any given person under any given circumstances. It seems to be utterly unfair to simply assume that an evening law student is more inclined than a day student to view the legal profession as simply a profitable business.

The nature of the outside work of the evening law student generally seems to be more appropriate to law study than the outside work of the "full-time" law student. The evening school man can hold down a regular office job that usually would not be available in the afternoons or evenings. Such would be the case, for example, with evening students who are employed in government, in banks, in school teaching, in the professions, and in executive capacities in business. If anything, the day student usually is confined to types of work that are less helpful towards preparation for the legal profession.

When some day law schools themselves admit that about half of their students actually are working students, it seems that any distinction at all between day and evening schools verges on the specious.

The Evening School and the Profession

No survey can accurately show the relative success or failure of evening law graduates as opposed to day school law graduates in later professional life. Too many factors of chance, personality and other intangibles are involved in success or failure. Yet some critics leap to the conclusion that day law graduates necessarily are more successful in professional life. It is said sometimes that some evening students have no intention of practicing law, but simply wish to have law training and the degree in order to advance their careers in other fields. This assumes that that is necessarily bad, though no logical reasons are given for that assumption. It ignores the well-known fact that many lawyers, coming from many backgrounds, ultimately wind up in non-legal positions, and in fact desire such positions. Nor does it consider the very healthy effect on the national life of the infusion of legal knowledge and training into commerce, industry and public office. And only an exhaustive investigation can show what percentages of graduates of the two kinds of law schools enter upon, or remain in, full-time law practice.

The most unjust assumption of all is the one that graduates of evening schools tend to be inferior as lawyers. This is simply a slander, supported by no evidence worthy of respect. The fact is that all of us know some graduates of evening schools who are worthy leaders of the legal profession, and some graduates of day schools who are by no means ornaments to the profession. The only common measuring device, the bar examination, is equally applied to both types before they become lawyers. The performance of evening law school graduates on bar examinations often is the better of the two.

The reputation of graduates of evening schools in general is good among laymen and not so good among graduates of day schools. Few clients care much about what law schools their lawyers attended. But some graduates of some day schools have been indoctrinated with a vague, self-satisfying sense of superiority towards graduates of evening schools. It does not seem to trouble those who thus propagandize students or others on the basis of vague or no factual knowledge, that they thus display serious ignorance if not outright prejudice.

It is the belief of the writer, based on admittedly limited observations, that evening law graduates are very active in bar associations, in politics, and as members of the judiciary—in

some places more so in politics and on the judiciary than day school graduates. This can be only an impression, as can be the view of those who argue that the contrary is true.

It is probably true (in logic, not as a known fact) that at least the younger evening law graduates tend to concentrate more in general practice than in the "more exclusive" corporate or trust work, for example. As a group they probably lack the entree that money and social status give, as compared with those who could afford to attend day law schools.

Last but far from least is the question of what percentages of evening school graduates would not have become lawyers had there been no evening law schools. This is only partly a question of financial status. Many law students, being college graduates, are no longer impressed by the glamor of country club-university days filled with leisure, sports, dances, dinners in panelled commons and other amenities of full-time collegiate life. They literally want to get down to cases, and voluntarily undertake the part-time curriculum because they can support themselves, marry, have children, and still prepare for their chosen career of law.

Many evening law students are mature men and women who already have achieved noteworthy status. At a typical large evening law school it is normal to find in the student body a number of engineers, several physicians and research scientists, many holders of government and civil service offices of all kinds, several accountants, many young (or older) business executives, some social workers, insurance adjusters, writers, newspapermen, and so on. How many full-time law schools can match such a student body in maturity, background and high motivation?

There are some evening law students who chose part-time school because of poverty, but they are not a clearly defined group. Far more often the evening law student is a settled, married man with a job and a family. He cannot quit working and earning in order to attend law school—not unless he receives a scholarship stipend of perhaps six or seven thousand dollars per year. And what foundations are offering many hundreds of grants in these sums?

In some large cities there are more evening law students than day law students, and more graduates of evening than of day law schools. Yet, even in these cities we see a curious

tyranny of the myth of the natural superiority of day law schools over evening law schools. Seldom do the evening school people challenge the myth.

The question of proper evaluation of evening law schools (at least those duly accredited by the American Bar Association) too long has been beclouded by fictions and superstitions. It is long past time for replacement of fictions by facts and of superstitions by logic. The study by the Special Committee of the Association of American Law Schools promises to supply the facts.

The accredited evening law school is here to stay for some time to come. The writer has no doubt that the study by the Special Committee, if and when it is done, will so conclude. The evening law school fits the nature and needs of a large part of modern American society.

That being so, the object should be to improve these schools. If the people need and want them, it is the duty of lawyers and law professors to make them as fine as possible.

Whether a man attends classes illuminated by the sun or by electric light should not be the criterion of the quality of his legal schooling, nor of the quality of the man.