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A Core Curriculum for Urban Law

David F. Cavers*

ANY ONE WHO HAS BEEN FOLLOWING the current discussion of the future role of the American legal profession will have been impressed by the widespread acceptance of the probability of major change in the practice of law in this country. Moreover, the changes that are foreseen are seldom changes in the practice of the "large firm," i.e., those firms with a sufficiently large number of lawyers to engage in the division of labor and to serve the needs of large clients.¹ Instead, the consensus is that change will take the form of a great expansion in legal services rendered to people of modest or meager means, including but not limited to the "legally indigent." Some of this expansion will be reflected in criminal practice, but much will relate to civil and administrative matters. Moreover, since many demands will be directed to government agencies at the local level, these agencies will have to enlarge their legal staffs to cope with the new business. Courts, too, will have to grow in size and numbers.

Whether these prophecies will be realized will depend in no small measure on the readiness of the bar to serve the emerging needs; if the profession were to fail, its committee on unauthorized practice could never stem the shift to lay agencies for the performance of many of the new functions. Moreover, most of the manpower who will respond to the new needs will not come from those law schools that now are providing most of the lawyers for the large firms. They may—and should—take an active part in developing new course materials and in conducting research relevant to the emerging needs of the urban citizenry, but their graduates are too few in number, and the competition of big law firms, big corporations, and big government for those graduates is too great, to enable these schools to be a major factor in meeting the new urban needs.

In this situation, as I pointed out in a paper in the American Assembly volume, *Law in a Changing America*: . . . "Schools that produce many of our solo and small-firm practitioners, most of the counsel for our criminal defendants, and probably most of the lawyers who hold state and local legal offices (including judgeships), should recog-

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¹ In an effort to give specificity to this concept, I suggested that it would be satisfied by an office with eight or ten lawyers. See Cavers, "Legal Education in Forward-Looking Perspective," in *Law in a Changing America* (G. C. Hazard, Jr. ed. 1968) 139, 141. Relatively few lawyers are in firms in this category. In 1963, Internal Revenue data indicated 2,180 law firms with five or more partners of which only 404 had ten or more partners. The total number of associates in Martindale-Hubbell for that year came to only 17,395. My guesstimate for 1963 placed roughly 28,500 lawyers in "large firms," about one tenth of the entire bar. *Id.* at 155.

nize the opportunity that these facts afford. They can claim with little, if any, exaggeration that their graduates will have greater responsibility for the well-being of our urban society than will the lawyers who represent great corporations or hold federal office. . . ."²

I followed this declaration with an admission that how these schools could best equip their graduates to discharge this responsibility was a question that could not be answered with assurance. None the less I advanced some rather general suggestions in a few paragraphs. The invitation to contribute to this symposium has provided me with an occasion to give greater concreteness to the thoughts I expressed in that previous paper, though I am sure that the modest proposals I am presenting here will fall well short of the developments in legal education that are likely to take place in the next decade.

My suggestions here will be directed to the second and third years of the law curriculum. In suggesting courses which I believe can provide a valuable body of knowledge in preparation for the new demands of urban law practice, I have ignored the opportunities for drawing on materials relevant to that practice in many of the courses that I do not mention. Without sacrificing instructional value, such materials can frequently be substituted in first-year courses and in some of the second and third year courses for materials drawn from a more bucolic America. This process is already beginning to take place, and I feel confident it will continue. This pouring of new wine into old bottles has the special advantage of not requiring a revision of the curriculum—or should I say the wine card?

What I am proposing in this paper it is now fashionable to term a "core curriculum." It is comprised of courses that are left out of the core curricula in virtually all law schools, although many schools include most of these courses among their electives. However, I should hope that not all of the courses I have specified would be required. Experience shows that a faculty can influence student choice without compelling every student to fit a common mold. I see the set of courses I am advocating as ones that a law faculty would be justified in encouraging its students to pursue after the first year of law study. (I assume that the first-year curriculum will be devoted mainly to the familiar subjects, hopefully enriched at many points with the urban-oriented materials.)

The content of a core curriculum to prepare law graduates for tomorrow's large-city, small-firm practice should, I submit, include the following.

First, this curriculum must embrace more of the criminal law than traditionally has been conveyed by the first-year course in that

² *Ibid.* at 150.

subject. Not only should the student be as familiar with criminal procedure as he is with civil, but also he should have studied post-conviction problems: the sentencing of defendants, the various forms of correctional treatment, and the operation of probation and parole. Moreover, responsive to *Gault*, he will need to be acquainted with the juvenile court system. These areas of learning should not be confined to the strictly legal; we have few, if any, better vehicles for setting law in its social context than those relating to the administration of criminal justice.

Next come two other areas of law where the legal system impinges on the individual, areas long underdeveloped. The more obvious of the two is family law. The solo or small-firm practitioner will be serving as counselor to families in trouble, and for this role he should have the broadened view of the relevant law that modern casebooks are imparting. New teaching materials for the second area, social insurance, are now becoming available. Billions of dollars each year are transferred from society to its individual members through social insurance devices. Effective representation of the insured calls for the understanding of legal problems posed by workmen's compensation, unemployment compensation, old age and survivor's insurance (and the private pension plans that supplement it), as well as the complexities of the latest coverage: Medicare. Not only can the knowledgeable lawyer serve his client, but he can also lift the level of official performance by insistence on the client's legal rights.

Third, the urban lawyer ought to have studied the law of his community. He is likely to become closely involved in this either as a spokesman for private interests and community associations or as an official. Basic to work in this area is local government law. It is a field where our nationally-oriented casebooks can usefully be supplemented by materials reflecting the idiosyncrasies of the state and municipal governments in each law school's jurisdiction. Perhaps, in the course of time, such supplementation will supplant the original, the role of which will become that of providing material for comparisons and critiques. An adjunct to local government law that is certain to grow in importance as the physical transformation of our cities continues apace is the law of land use planning. This process is likely at one time or another to affect the work space or living space of nearly every urban citizen and, through zoning appeals, is already providing much employment for the bar.

Fourth, the legal profession itself is an institution of our society that calls for law school study. It will be generating new legal norms and organizations as it undergoes change. A better understanding of its basic functions and relationships might help to counteract the disintegrative tendencies that have been vividly, if depressingly,

portrayed by Jerome Carlin. Moreover, instruction in the problems of the legal profession should embrace their economic aspects, including especially the economic aspects of solo and small-firm law practice. In this context, the training of paraprofessionals may well emerge as a responsibility for law schools. Now, at the very threshold of this task, we are confronting problems of identifying paraprofessionals' roles and functions. As we come to deal with these more precisely, we shall doubtless find ourselves identifying more exactly the areas within which the lawyer can operate most effectively as a professional.

Fifth, the need to devise effective law school teaching methods to develop the lawyer's professional skills has been overcoming the inertia that stems from the fact that, for the law school graduates who go into the larger law offices, a more economical and often more effective mode of instruction is at hand. Already progress is being made in the development of skill in trial advocacy, a goal that is being vigorously pressed today by trial judges. This study may be the beneficiary of the growing availability of video equipment and student operators. Training in draftsmanship, negotiation, and counseling is more difficult to purvey, especially where student-teacher ratios are high. However, an instrumentality has been coming to the fore that may provide a laboratory for the development of all these lawyer skills: the law clinic, whether this takes the form of a legal aid office operated by the law school itself, a neighborhood legal aid office, or a public defender's or a correctional institution's staff—or some or all of these.

Clinical legal education holds the promise not merely of affording a vehicle for practice in trial advocacy, drafting, negotiation, and counseling, though it may provide all of these, but also of bringing law students into direct contact with all the subjects in the core curriculum I have been projecting. Much of the clinical case load will be drawn from the criminal law, family law, the social insurances, and the law of local government and land use.³ Moreover, the problems encountered in clinical work are likely to pose questions of consequence for the legal profession. Yet, for exposure to these subjects to be educationally fruitful, it is important that a school's clinical operation include faculty in its staffing and that provision be made for the students to absorb and reflect on the lessons of their own and their fellows' experience. This is not an easy educational goal to

³ No doubt it will also draw heavily on the law of landlord and tenant and the laws governing consumer credit and wage-earner bankruptcies and compositions. I have not listed courses dealing with these subjects in the suggested "core curriculum" on the supposition that due attention would be accorded them in Property, Commercial Transactions, and Creditors' Rights. This may be impracticable. If so, then a course on the contractual obligations of consumers (including, if need be, consumers of housing) should be added to the list. Materials for such a course may be emerging under the catchall label of "Poverty Law."

achieve, but one may hope that the know-how gained by the many and diverse operations now getting under way can be disseminated among the experimenting schools, a service which the new Council on Legal Education for Professional Responsibility may perform or at least support.⁴

To summarize, I have proposed a core curriculum for the second and third years of law study which would comprise an advanced course or courses in the administration of criminal justice and a course in each of the following subjects: family law, local government law, land use planning, social insurance, the legal profession, trial practice, and possibly instruction in other lawyer's skills. To bring these from the classroom to the arena of professional action, I also propose a period of clinical service, perhaps focussed exclusively on legal aid and defenders' services but hopefully extending to other, more diversified services. Translated into credit hours, the proposed offering would total from 15 to 20 semester hours out of a total of from, say, 54 to 60 semester hours in the second and third years of law study.

I submit that this is a modest encroachment on the courses now occupying these hours. They are not unimportant, however, and I should hope that their compression rather than their exclusion would become the accepted means of accommodation. For this purpose I trust we may soon recognize the need for teaching materials better adapted to imparting an understanding of their respective subjects in a reduced number of class hours than could be attained by skipping about in the familiar 1,000 to 1,500 page casebooks, media better designed for 60-semester-hour courses. By selecting subject matter relevant to the needs of the schools they serve as well as by their compact size, the text-and-casebooks of the future, perhaps supplemented in time by programmed materials, can open up new options in law curriculum planning, especially for those law schools whose graduates will be the solo and small-firm practitioners, as well as the state and local officials and judges, in tomorrow's cities.

⁴ The Council was brought into being last spring by a Ford Foundation grant of \$6,000,000 as successor to the much smaller Council on Education in Professional Responsibility. Under the direction of President William Pincus, the new body has been spurring the development of clinical legal education by grants to law schools and, in some cases, consortiums of law schools for the creation of clinical programs and the training of law teachers in clinical legal education.