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Ross L. Malone

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LAWYERS IN THE SPUTNIK ERA

ROSS L. MALONE*

It is an interesting aspect of the history of our profession that as civilization has progressed, the importance of lawyers in society has steadily increased. As society has become more complex, an effective system of justice has become more necessary. The result has been that the position of our profession in the community has improved as civilization has developed.

The relationship between the state of development of society and the position of the legal profession is typified by a comparison of the position of lawyers in England and in this country during colonial days. The Inns of Court had been functioning in England for over two hundred and fifty years and in fact were in their greatest era when the Pilgrims set foot on Plymouth Rock in 1620. But the position of lawyers in the society which developed in the western hemisphere was in no wise comparable to their importance and influence in the more complex civilization of England—even though it had been the country of origin of most of the colonists. Dean Roscoe Pound, in *The Lawyers From Antiquity to Modern Times*, has pointed out that the century and three quarters from the first settlement in the new world to the Declaration of Independence can be divided into four stages as regards development of the legal profession in the colonies:

1. An attempt to get on without lawyers;
2. The stage of irresponsible filling out of writs by court officials and pettifoggers;
3. The era of admitted practitioners in permanent judicial organizations; and
4. The era of trained lawyers—the bar of the eve of the Revolution.

These steps in the development of the profession paralleled the development of colonial civilization to a marked degree. We thus find that as civilization progressed, the place of the lawyers in colonial society assumed added importance and the position of the profession improved.

That this has been the case throughout the history, from the beginning of the profession in ancient Greece to the present time, is a tribute to our profession. Had it not met the challenge of increasing responsibility which has accompanied the elevation of its position in the community it could not have survived; certainly it would not have continued to grow in numbers and in influence as it has in the United States and other countries of the western world.

*Ross L. Malone, President of the American Bar Association, received his LL.B. degree from Washington and Lee University in 1932. Mr. Malone is a partner in the law firm of Atwood and Malone, Roswell, New Mexico.

I would like to offer some additional evidence in support of my premise that the position and importance of lawyers has a direct relation to the stage of development of the society in which they practice. Approximately a month ago I returned from a trip to Russia and Yugoslavia with a small group of officials of the American Bar Association who were observing the legal profession and courts behind the Iron Curtain. We talked to lawyers and judges in Leningrad, Moscow, Kiev and Belgrade. The reception accorded us left nothing to be desired. The Russian lawyers and judges seemed pleased by our interest and were generous in providing the information which we requested.

We felt that the procedure which we followed in our interview was quite effective. In almost all cases an interpreter was necessary, but we soon learned to accommodate ourselves to that situation. I might say that coming from a state in which the use of an interpreter in court is almost an every day occurrence, I perhaps had an advantage over other members of the party.

President Charles S. Rhyne opened each interview with a statement as to the purpose of our trip and asked if the group being interviewed, usually the officials of the local bar organization, would answer questions which the several members of our party might want to ask. Invariably the answer was, "We will be glad to answer any questions which you may ask." Each member then asked questions of, or perhaps I should say cross-examined, the members of the Russian group until he was satisfied, then passing the witness to the next interrogator. All of us were busily making notes as the interrogation proceeded.

One of the questions which was always asked was as to the position of lawyers in the Russian society. Not content with the answer which that question might evoke, we then probed with other questions which we felt might either support or disprove the answer which we had received.

Some such questions were: "What is the average income of lawyers as compared to engineers, teachers, doctors, scientists and other professions?" "How many of the members of the Supreme Soviet of the U. S. S. R. (which corresponds to our Congress and is composed of two houses) are lawyers?"

The answers to our questions disclosed that lawyers in private practice in the U. S. S. R. still obtain their entire income from fees paid by their clients. Lawyers and dentists are the only two vocations remaining as to which this is true. The average income of lawyers in private practice is 1400 rubles per month, which at the official rate of exchange is \$350.00 per month. This compares to a national average in the United States of \$10,533.00 per year, or approximately \$900.00 per month. Perhaps I should mention in this connection that the U. S. S. R. imposes no income tax on the first five hundred rubles per month, a tax of 1½% up to one

thousand rubles, and a maximum of 13% on all income over one thousand rubles.

The lawyers expressed themselves as feeling that their position compared favorably with doctors, scientists and engineers, but other information which we received did not support this conclusion, particularly as compared to scientists and engineers and educators. Lawyers compose only about 10% of the Supreme Soviet as against over 66 $\frac{2}{3}$ % of our Senators and 56% of the members of the House of Representatives who are lawyers. The total number of lawyers in private practice in Moscow, a city of some five million people, was 2,000. We were told that there are 16,000 lawyers in private practice in the entire U. S. S. R. with a population of over two hundred million people, or one lawyer for every 12,500 people compared to our rule of thumb of 1 lawyer to 1,000 people in this country.

It was quite apparent that there was very little legal work of consequence to be done in Russia. In spite of the fact that the relationship of civil to criminal cases is about the same as in this country (80% civil and 20% criminal), the civil cases are almost all of minor importance. You can imagine how much of your and my practice would remain if all law practice resulting from business relationships between commercial and industrial enterprises and all work arising out of the ownership of land were eliminated. Yet in the U. S. S. R., since absolutely all business and all land is owned by the government, legal work of that character is non-existent. That remaining seems to be mostly divorce, inheritance, and controversies between families who occupy the same rooms in whole or in part, who are in dispute as to their relative rights. There is very little personal injury litigation because there are very few automobiles and most of them belong to the government.

Our conclusion from these and other conditions which we observed was that the legal profession in the U. S. S. R. today occupies a relatively unimportant position, both in society and in its relation to government.

Russia today is far behind the western world in terms of civilization as we know it, but I would be remiss if I did not add that she is catching up faster than any country in the history of the world. The statement heard frequently in the U. S. S. R. that the industrial revolution which occurred over a period of 200 years in England was accomplished in Russia in 40 years is close to the truth.

There is good reason to conclude that the relatively unimportant position of the legal profession in Russian society is attributable at least in part to the fact that Russian civilization is far behind ours. During the period since 1917, however, the industrial revolution has brought more and more people to the city. As the U. S. S. R. has developed it has been found increasingly necessary to restore courts as an institution of government, and with them—lawyers. Further emergence of the legal profession into

prominence can be anticipated as Russia continues to approach the western world in its civilization and as its society becomes increasingly complex.

In concluding reference to our Russian experience, I want to add this one overall impression. The greatest mistake that this country can make is to underestimate the U. S. S. R. or to indulge in wishful thinking that the people of the U. S. S. R. are going to throw off the shackles of Communism. While only $3\frac{1}{2}\%$ of the Russian people are members of the Communist Party, that $3\frac{1}{2}\%$ has absolute control of the government, the armed services and the economic life of the country. This small segment of the population constitutes the modern Russian aristocracy, but the people as a whole, who are better off than they have ever been before in history, are thoroughly sold on the entire program. They have so little opportunity to know what goes on in the outside world and are so thoroughly brainwashed by the propaganda which they live, eat and sleep that hope of radical internal change in Russia in the foreseeable future is wishful thinking—wishful thinking which is dangerous in the extreme.

Returning now to the legal profession in the United States; if I have made out at least a prima facie case that there is a relationship between the state of civilization in a country and the position of lawyers at a given time, it would follow that lawyers in the United States today should be enjoying a very favorable position in terms of the importance of our profession and demands for our services.

No one would question that in the space age in which we are living, society in the United States has achieved a maximum of complexity. No one in this audience, I am sure, would question that civilization has reached a high point of development in this country today. If that be true, we would expect to find the importance of lawyers in society and the demands for their service greater than ever before. There is ample evidence that these conditions exist.

But what of the effect on the profession of the space age of today? There are two respects which I wish to mention in which it seems to me that the impact of the sputnik era requires immediate attention on our part. They are, first, our future supply of lawyers and, second, the qualification of members of the bar to perform the varied and ever changing services required of our profession in the complex society of today.

The oft repeated truism that the future of our country lies in its youth is equally applicable to our profession and its law students. The status of the legal profession in tomorrow's society and the extent to which it will discharge successfully its obligation to provide leadership in public affairs will depend in the first instance upon the character, intelligence and ability of the students who are attracted to the study of law.

The character and ability of applicants for admission to the profession have always been subjects of concern to law schools and to the profession,

but I believe that there is much greater reason for concern today than ever before. To an extent never before known, the legal profession is competing today for the intellectual ability of this and succeeding generations. The tremendous effort now being made to recruit young people of ability for the sciences and engineering inevitably will affect the number of outstanding students who enter law schools and equally will affect the average of the scholastic ability of those who apply for admission. The National Defense Education Act passed in August by the Congress to provide assistance for institutions of learning and student loans to deserving applicants is designed to increase the number of scientists. It is certain to attract some students who otherwise might have entered the legal profession.

A prominent educator recently observed: "We have entered a rat race for scientists that will dwarf the old competition for athletes. Where the coaches play with thousands, the government and the large foundations command millions—hundreds of millions." This blunt statement is hardly an exaggeration, and the legal profession cannot but suffer from the situation which results.

The dramatic scientific advances of the past decade, during which the college students of today were considering their futures, understandably have caught the imagination of many outstanding young men and women who otherwise would have been potential lawyers. If you think that this is an apparent rather than a real problem—consider the Dean of a well-known state university law school who has said that this year, for the first time in history, the law school has not had an application from a single honor graduate of the arts and sciences school of his institution.

There are too many straws in the wind to be ignored. Our profession is in danger of losing its share of the best qualified students of this generation. Prompt action is indicated; action we are obligated to take in the interest of the public which we serve and in the selfish interest of our profession.

Perhaps some of you are saying, "I can't get very excited about this. The profession has been over-crowded for a long time and it will be good for us to cut down on the number of new lawyers each year, even if we do lose a few good men."

The evidence that over-crowding does not in fact exist today is overwhelming. If you have been looking for new lawyers in the last few years, as I have on several occasions, you have found that they are hard to find, and when you do find a good one, he has four or five opportunities available to him.

Listen to Dean Albert J. Harno in his last letter to his Alumni before retiring as Dean of the Law School at the University of Illinois approximately a year ago:

“. . . leadership (of the profession) may be threatened through circumstances that are at present quite unsuspected by the profession. The fact is that there is today a serious shortage of lawyers, and in my judgment that shortage will become definitely more acute before there will be any improvement in the situation. This is a question on which the profession and the public generally are so misinformed that I hesitate even to mention it. . . . In the past year (we) (had) a ratio of approximately eight requests (for recent graduates) to one response we could make. I am not speaking about requests for our top graduates. The ratio I am giving you applies to all our graduates.”

Dean Harno further points out that there were more students enrolled in American law schools in each of the years from 1926 to 1930 than in any of the years from 1952 to 1955; also that there were more applicants admitted to the bar in each 1927, 1928 and 1929 that were admitted in either 1954 or 1955. In 1930 the population of the United States was 123,000,000. In 1955 it was 163,000,000, an increase of approximately 33 $\frac{1}{3}$ %, whereas, in the same period, there was a decrease in both law students and admissions to the bar. If, in fact, the profession was overcrowded in 1929, it would appear that developments of the last 30 years have more than corrected the situation. Furthermore, in comparing these figures, it must be borne in mind that the students in law school in 1954 and 1955 made their decision to enter the profession in the pre-sputnik era and before the present emphasis on scientific fields of endeavor had developed.

The statistical data on which Dean Harno's conclusions are based are fully supported by recent studies made by Reginald Heber Smith in connection with the work of the Survey of the Legal Profession. These studies are the subject of an article to appear shortly in the Journal of the American Bar Association.

Mr. Smith suggests that in view of the fluctuations in law school enrollment incident to World War II, the only fair basis of comparison should be on the basis of decades. He compares the total number of law students and the total number of admissions to the bar during the decade from 1930 to 1940 with those of 1940 to 1950 with these significant results: During the earlier decade there was a total of approximately 390,000 students in the law schools, whereas, between 1940 and 1950 that number decreased by 96,000 to a total of approximately 294,000. Admissions to the bar during the years from 1930 to 1940 totalled 91,000. In the succeeding ten year period the total fell to 65,000, a reduction of almost 25%. All this occurred while the population of the United States was increasing some 22% from approximately 123,000,000 to approximately 150,000,000 people.

Admittedly, the impact of the war years on the second decade may result in a distortion of some extent, but it would be offset to a large degree by the tremendous increase in law school enrollments during the

post-war years of 1946 to 1949. When we realize that in spite of the effect of the depression on law school enrollments in the '30s, they were in excess of those in the ten years from 1940 to 1950, the possibility that we are on the verge of an actual shortage of lawyers becomes very real.

The figures available for the period subsequent to 1950 offer no reason to believe that the decline in the number of law students and admissions to the bar had ended. During each year since 1949, which had a post-war law school enrollment of 56,102, there had been a decrease in the number of students in law school, with the exception of 1956. The total of 56,102 students in 1949 had decreased to 41,781 by 1957. Admissions to the bar have decreased each year from the high of 13,641 in 1950 to 9,450 in 1956. And again it must be borne in mind that this decrease has occurred in a constantly increasing population and under conditions requiring more and more legal services in ever expanding fields.

As I read these and other available figures, and look at the inevitable impact of the space age upon students selecting a career, I am genuinely concerned as to both the quality and quantity of applicants for admission to law school and to the bar. If that concern is justified, it is vital that we immediately become active in meeting a threat which could jeopardize the future of our profession.

What can we do? There are a number of things that are immediately apparent, and others that must be explored.

First, we must dispel the widely held impression that the profession is over-crowded and that there may be no place for new graduates. I am convinced that there are places in the profession for all of the qualified law graduates whom we can produce in the next ten years, and probably for far more than we will produce.

Second, you and I, individually, must do some recruiting among the young men and young women of our acquaintance who have ability and show any interest whatever in the law as a career.

Third, we must see that there are qualified law-counsellors in all liberal arts schools and that those counsellors have complete information both as to the need for lawyers and the inducements to undertake a legal career.

Fourth, the organized profession itself must take the lead in lessening the separation that exists between law schools and the practicing profession by taking a greater interest in legal education and in law students, and by integrating law students into the profession to the fullest possible extent.

Fifth, a program must be devised to stimulate and keep alive the interest of high school and college students in law as a career. Such a program is essential if we are to hold our own in the vital pre-law area.

Sixth, there must be increased emphasis upon the establishment of law scholarships and law student loan funds. Industry today is investing funds for such scholarships to obtain scientists. There is no reason that firms and individuals in our profession, many of whom are in a position to do so, should not make the same sort of investment in the future of our profession.

The program which I have outlined requires the joint effort of the American Bar Association and of state and local associations. I invite your assistance in effectively carrying it out.

Earlier in this discussion I suggested that had the legal profession not met the challenge of increasing responsibility which has accompanied the elevation of its position in the community, it could not have survived. The developments which have contributed to establishment of the position of the legal profession in this country today pose the greatest challenge which the profession has ever known.

The flood of reported cases coming from state and federal courts, the kaleidoscopic developments in the field of tax and administrative law, the new legal problems presented by nuclear fission and fusion and their application to industrial uses, and the new specialties constantly emerging which increasingly affect the practice of the general practitioner, to mention only a few, all emphasize the fact that no longer can a qualified lawyer consider that his education was complete when he was admitted to the bar and that thereafter his only obligation is to keep up with the advance sheets.

The necessity for post admission education was apparent to our brothers of the medical profession some time before we of the law became aware of it. As a result, the physician or surgeon who does not take some post admission training each year to keep abreast of the developments in his profession is rare indeed. The legal profession cannot adequately discharge its obligation to the public in the age in which we live without a greatly expanded continuing legal education program.

This situation has been recognized by the Board of Governors of the American Bar Association, and action is underway to effect both expansion and acceleration on a nation-wide basis.

Heretofore the American Bar Association has been active in this field only through its representatives on the Joint Committee of the American Law Institute and the American Bar Association which has functioned essentially as an American Law Institute activity. While that Committee has accomplished much during the ten years of its existence, and will continue to be active in the field, the American Bar Association has created and appropriated funds for a Special Committee of the Association to direct a much accelerated program in conjunction with the American Law Institute and state and local bar associations. It is only necessary to com-

pare the well planned and comprehensive continuing legal education program in some of the most advanced states, such as California, with the program in many states which are operating on a hit or miss basis, to realize that there is much to be done.

The American Bar Association's objective is to assist state and local associations in the development in every state of a planned program of continuing legal education designed to meet the needs of that state. Such a program will provide legal institutes conducted by qualified practitioners presented regularly in as many locations in the state as may be required to make it reasonably accessible to every practicing lawyer in the jurisdiction. Full advantage, of course, will be taken of the contribution which can be made by the law schools in the state.

As one means of accomplishing this objective, plans are underway for a nation-wide Conference on Continuing Legal Education to be held during the year for state and local bar officials. At that Conference the most experienced people in the field from throughout the United States will be assembled to provide a blueprint, with accompanying plans and specifications, for the successful conduct of state-wide education programs for practicing lawyers. May I urge that your association make plans now to participate in that Conference, details of which will be announced later this fall.

I mentioned earlier our contacts with the legal profession of the U. S. S. R. You will be interested to know that we found that there is a well organized system of post-admission education for practicing lawyers in existence in all the principal cities of the U. S. S. R. There is no national organization of lawyers in that country, although we were told that the government had submitted to the profession a year or two ago the question of whether or not one should be established. After discussion, it apparently was the view of the majority that none was justified. Thus, there exist only city bar organizations, but they conduct regularly scheduled institutes for practicing lawyers, in both civil and criminal fields, twice a year. In that respect they are considerably ahead of some jurisdictions in this country.

In conclusion may I assure you that I am not suggesting that the two problems which I have discussed are the only problems of our profession resulting from entry into the space age. Neither are the activities of the American Bar Association during the coming year to be limited to them. There are many others with which you are familiar. One which is of paramount importance, and should be mentioned, is the contribution which our profession can make toward the ultimate realization of world peace through the application of law to the solution of world problems. This must be a continuing objective of our profession. It is in an area in which we have special competence with a resulting special obligation for leadership.

On the home front, however, the impact of current developments in the educational and career fields, upon the legal profession as it will exist tomorrow, and the need for acceleration of our education program for practicing lawyers, challenge us to immediate effective action. I am confident that we will meet the challenge.