The Future of the Legal Profession in Massachusetts

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The bench and bar of Massachusetts have had a brilliant history. The Bay State has brought forth some of the nation's best jurists, has fashioned some of its finest laws and has star-studded the firmament of American jurisprudence with decisions which will ring with truth and justice wherever democratic institutions prevail. The 8,000 members of the legal profession in the Commonwealth have a heritage which imposes on each of them a fearful responsibility.

Massachusetts has likewise always benefited by strong bar associations and the ever more intense present activities of the Massachusetts Bar Association and of the regional bar associations of the state assure us that the organized bar is alert to the challenges of the present and the threats of the future.

At this time when everyone seems so concerned about the quantity and quality of our future scientists and educators and physicians it is appropriate that the legal profession in Massachusetts indulge in a little self-analysis. What is the future of the legal profession in Massachusetts? Will it be as strong ten years from now as it could be? Will attorneys enjoy more of the respect they deserve in the next generation than they have now? These are some of the basic questions that I would like to raise with you in the hope that some light may be cast on the problems of an important profession which, in social and moral matters, exercises so many influential roles not always shared with scientists, educators or physicians.

-LAWYERS OF THE FUTURE-

Let us review some of the problems of the lawyers of the future and then the lawyers of the present.
There is sound evidence to believe that locally and nationally the country's top talent is not entering the legal profession in the same proportion as in the past. The quick financial rewards of business and applied science as well as the prestige of medical practice seem to be diverting talented youths from the study of law. The myth of overcrowding in the field of law added to the sometimes tarnished prestige of the legal profession also hinder gifted college students from entering law schools. The current president of the American Bar Association, Mr. Ross Malone, is making the recruitment of able pre-legal students one of the main objectives of his year in office. A similar program for the gifted college students of Massachusetts would produce valuable, long-range results for the quality of the bar of the future.

Another new feature of the American Bar Association's program for attorneys-to-be might also be initiated on the state level. Every student in the 124 approved schools of law in the nation is eligible to be a member of the American Law Student Association, an affiliate of the American Bar Association. Consequently every law student is an inchoate or a junior member of the organized bar. Associate or junior membership in a state bar association would be mutually profitable for law students and lawyers alike.

--BETTER LEGAL EDUCATION--

Before World War II Massachusetts had eliminated all unapproved and unaccredited medical schools. No responsible person would today urge that unapproved medical or nursing education has any right to exist. The professions and the public have the right and duty to insist that professional schools live up to certain minimum standards.

Unlike New York, New Jersey, Connecticut and other leading states Massachusetts still tolerates unapproved law schools. To take the Massachusetts bar examination one needs a minimum of two years of college and three years full time or four years part time at any law school, accredited or not. The time has come for the legal profession and the public to insist that unapproved legal education is
just as dangerous to society as unapproved medical education.

If it is alleged that some future Abraham Lincoln will be lost to the world if unapproved law schools are closed then the bar associations and the legal profession could prevent this result by endowing a loan fund so that no impecunious able student would be deprived of a legal education.

Unapproved law schools are an anachronism in Massachusetts and elsewhere. The quality, the prestige and the public trust that reside in the legal profession demand that the education of all lawyers be carried on under conditions open to the inspection of qualified observers.

- THE SALARIES OF NEW ATTORNEYS -

Only five states in the union still perpetuate the institution of an apprenticeship in a law office as a prerequisite for entrance into the legal profession. But in many states young lawyers are hampered by a system which dictates that a young attorney, with a post-college training equivalent to the Ph.D. degree, must work for sub-standard wages. In a state like Massachusetts where the average and median salary of attorneys is somewhat less than in other comparable states it is easy to understand that the junior members of the bar will receive abnormally low wages. But the results of this economic penury which young lawyers must face are not good for the legal profession. Some new lawyers never practice, some practice part-time with disastrous consequences to their own competency and to the prestige of the bar, and many migrate out of the state. While some observers may not see anything too disturbing in this picture the fact of the matter is that the financial servitude too often imposed on new attorneys will in the long run have an injurious effect on the organized bar of the Commonwealth.

-LAWYERS IN PRACTICE-

So much for a few of the concerns of the lawyers of the future. The lawyers of the present have their problems also and it is probably not an exaggeration
to state that what the organized bar does about certain crucial problems will
determine to a large extent the future prestige of the entire profession. Those
problems include post-admission training, the selection of judges, the availability
of legal aid for indigent defendants accused of crime and the public relations of
the legal profession. Let us touch on each of these issues.

-CONTINUING LEGAL EDUCATION-

Nothing hurts professional people more than ignorance. An ill-informed
lawyer is more dangerous than any other threat to the legal profession. With the
complexities of the law deepening each day lawyers must study as never before. Post-
admission training for attorneys must be deepened and intensified by the bar
associations. Once again local legal groups must follow the lead of the American
Bar Association and emulate the continuing legal education programs which in other
states have been, up until the present, superior to those offered in Massachusetts.

-SELECTION OF JUDGES-

The judiciary in our culture is the honored repository of the most
sacred traditions of civilized mankind. The Constitution of the Commonwealth states
solemnly that "it is the right of every citizen to be tried by judges as free,
impartial and independent as the lot of humanity will admit."

Three methods of selecting judges have been devised in American history.
The first and most traditional method is the appointment of the judiciary for life
by the executive. Only Massachusetts and four other states employ this system.
Judges are selected by the legislature in four states. In thirty-six states all
of the judges are elected and the remaining states have various modified compromise
plans.

It can readily be seen that Massachusetts, far more than the vast
majority of the states, relies strongly on the wisdom of the executive in the
enormously important matter of selecting the best possible appointees for the
Experts in the field of judicial administration supply probative evidence that the Massachusetts method of selecting judges is one of the best,—if not the best,—method of filling vacancies in the judiciary. The prestige of the Supreme Judicial Court and the quality of the 163 judges who have served on the Superior Court during its 99 years of existence confirm the fact that appointment of the judiciary by the executive has been an outstanding success in Massachusetts.

At the same time, however, the responsibility centered in the executive needs to be assisted by a deep conviction within the legal profession and the public that the selection of judges transcends any question of politics, race or religion.

The selection of a judge should be made with the same care as would be given to the selection of a doctor to head a major medical center. A judge needs all the skills required of an administrator of a great hospital. A good judge must be an expert in law, a skillful harmonizer of conflicting interests and a person with a profound understanding of human nature. The search and selection of a judge therefore should be done with the thoroughness which a medical center or a large university exerts in the selection of its new principal officer.

A person's political affiliation is as irrelevant in a prospective judge as it would be in weighing the qualifications of a possible college president or director of a large medical center. To make the selection of judges a part of the spoils system is to tarnish the prestige and independence of the judiciary. If the public can state that a judge is only a lawyer who knew a governor a cloud hangs over the prestige of the judicial branch of government.

If the selection of judges is to be removed from politics in this Commonwealth the bar associations, the press and the public must preach in season and out of season. At the same time the salary scale of the judiciary must be revised so that service on the bench will be financially attractive to the most able and successful attorneys.
It is safe to say that the executive who once and for all removes politics from the selection of judges in Massachusetts will by this stroke of genius be applauded and rewarded for his courage far more than he could possibly be rewarded by continuing to select judges on the basis of political considerations.

We need a wall of separation between politics and the selection of judges. The wall should be high and impregnable because in this matter good walls make good judges.

-LEGAL AID FOR THE INDIGENT-

On June 13, 1958 the Supreme Judicial Court amended its rules to provide that a defendant charged with a noncapital felony who appears in the Superior Court must be assigned a lawyer unless he elects to proceed without counsel. This desirable new rule brings Massachusetts more into line with the practice of our Federal courts and of recent decisions of the United States Supreme Court.

Many methods could be employed to carry out the mandate of Rule 10. Massachusetts could accept the public defender system or, on the other hand, Massachusetts could adopt the practice of assigning criminal cases at periodic intervals to the next available lawyer, with or without a fee. Unfortunately wherever this arrangement has been adopted it has resulted in an unsatisfactory system. A far better plan would be the establishment by the Supreme Judicial Court of a state-wide commission with a permanent executive secretary which would take the responsibility of assigning cases to lawyers qualified in criminal work. This system would in effect extend and implement the excellent work of the Voluntary Defenders.

Legislation has recently been introduced to create this non-partisan Board. It deserves the support of the organized bar and the legal profession. Indeed the fate of this legislation will seriously affect the future prestige and the public relations of the attorneys of Massachusetts.
Every professional group is reluctant to admit that it is actively working to enhance its own public relations. Such an admission suggests the "hard sell" or the "puffing" of the Madison Avenue ad man. The fact remains, however, that in this day of mass media the organization or institution which does not communicate news of its services to the world operates at a disadvantage. To a certain extent public services to the community will be themselves a communication but frequently the work of attorneys is so complex and so little seen by the public that a positive program of communication is needed.

Excellent strides in this direction have already been made by the Massachusetts and Boston Bar Associations, but these groups would be the first to admit that the image of the lawyer in the public mind still does a disservice to the learned and noble profession of the law. Let the organized bar therefore intensify the work initiated in this area so that the prestige rightfully due officers of the court may be enhanced.

Such are but a few of the factors which affect the future of the legal profession in this Commonwealth. One can say, however, that never before has the profession be so well organized and so aware of the problems that will confront the attorneys of Massachusetts during the decade to come. Membership in the Massachusetts Bar Association and regional bar groups is at an all time high. Those now entering the profession are for the most part college graduates and the beneficiaries of a legal education unprecedented in quality in the history of the state. Let us pray that their production will live up to their promise. And let us hope that every member of the legal profession will always remember the wise words of Solon, the ancient Athenian jurist. Asked how justice could best be secured Solon replied that justice is assured "if those who are not injured feel as indigent as those who are."