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Who Should Be a Lawyer, but Why

Roger J. Traynor

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Legal journals abound with discussion of selection for admission first to law school and then to the bar. The neglected problem is how to persuade a gifted prospect, well aware of his worth, to join the legal profession and see the world rather than join, say, the sciences and put the world in its place. What profit us to perfect selection techniques and to enrich legal education if we ignore the central problem of recruiting in the competition for brainpower? We, too, must pass tests with those we would recruit, and we shall come to some soul-searching questions on that score.

But first, let us examine how we have defined our recruit and what we expect of him. I nod in acquiescence to the recurring symposium on summum bonum—the two-fisted whole man, integrated with people but independent from mobs, a broad Rock of Gibraltar, a lean tower of strength, a pillar of society beyond Ibsen's reproach, and, of course, at the summit a hard-headed lawyer. The fledgling case-briefer who is to become all these, and likely a baby-sitter, too, will have three short years—the consensus is preferably no more or less—to master theory, as the educators hold the line against any politic pitch to practice. He confronts a curriculum that mushrooms despite maledictions from the old guard, who would change nothing at the good old Buckingham Palace of fundamentals. There is a nice ocean-front of agreement that he is to be reprieved for half an hour a week for exercise in deference to Juvenal's maxim of mens sana in corpore sano or to what symposers might call the incorporeal right of law students to maintain sanity in their bones whatever the disorder in their minds.

We unroll our great expectations to the gifted vagabond we ask to join the law with an assurance that leaves us unprepared when he responds: Why should I? If we looked with his eyes, we would perceive the flaws that repel him in our techniques of selection, and thus clear the way for an understanding of his deeper dissatisfactions.

We know that law school admission turns on increasingly sophisticated combinations of college records, recommendations by teachers with the unique advantage of first-hand observation, intelligence quotient

* This paper was presented at the dedication exercises for the new College of Law Building at Ohio State University, Columbus, O., April 23, 1960.
† Associate Justice, Supreme Court of California.
scores, and aptitude tests. A good half of our schools now make mandatory the Educational Testing Service’s Law School Admission Test\(^1\) as a measure of ability to read with understanding and discrimination, to reason logically, and to evaluate the relevance of arguments. We are a long way from 1940, when Dean Gulliver of Yale deemed it necessary to explain why his school required such a test\(^2\) and from 1929 when Dean Wigmore spoke his misgivings about what he called “juristic psychopoyemetrology.” \(^3\)

Studies are under way to refine tests of analytical power based on the case method.\(^4\) Unquestionably such tests offer some means of separating the logical boys from the boys. Unquestionably they are superior to oafish true-false and optional-choice tests that compel the mind to surrender with an abject X to one of the meagre alternatives in a shallow groove—recalling the while Matthew’s forlorn injunction: “Let your communication be, Yea, Yea; Nay, Nay: for whatsoever is more than these cometh of evil.” \(^5\)

As one who welcomes ample testing of candidates as a supplement to records and recommendations, to preclude wasted education and needless disappointment, I still believe we should use such tests with caution. In their preoccupation with correct thinking, they may fail to uncover analytic power so strong as to burst the bounds of even skilful questions. We should take care that our tests do not screen with such mechanical efficiency that they screen out a mad mathematician like Lewis Carroll or a Dumb Ox like St. Thomas Aquinas whose seizures of insight carry them beyond the conventional blocks of the testers to the bleak domains where original construction begins.

True, the legal profession proclaims itself a humane society, on the alert against mind-binding. Yet, despite its avowed romance with the humanities, countless members mourn the sorry bluebooks, the ill-lettered briefs and judicial opinions of countless others who have vaulted the barbed wire of admission tests, and pass as the good coin of logic what could not pass as good English. With all too few, though dazzling exceptions, the Jeremiahs hardly qualify as a race of superiors. Their own paragraphs betray them, whether in musty pretension to learning or turgid peroration or bumbling outline or mere announcement of a course.

\(^1\)Burnham & Crawford, Law School Prediction at Mid-Century, 10 J.LEGAL ED. 189, 190 (1957).
\(^2\)Gulliver, The Use of a Legal Aptitude Test in the Selection of Law School Students, 9 AM.L.SCH.REV. 560 (1940).
\(^3\)Wigmore, Juristic Psychopoyemetrology—or, How to Find Out Whether a Boy Has the Makings of a Lawyer, 24 ILL.I REV. 454 (1929).
\(^5\)MATTHEW 5:37.
Dullards carry on in the grand manner about their traditions, as if their professional Mother Goose were somehow learned beyond the geese of others. Orators take us back to Runnymede through interminable corridors of time. The Association of American Law Schools issues a Statement of Association Policy on Pre-Legal Education that states as Objective A, “Comprehension and Expression in Words.” Lest such a phrase elude the steel-trap minds of lawyers, the Statement defines Objective A further as involving “perception and skill in the English language.”

The Law School Admission Test Board studies the language problem and introduces some new testing materials. A lawyer preoccupied with the language problem thereafter comments: “That the score decline indicated anything in regard to reading skills due to the fact that in that year several of the smaller, nonnational law schools began to require the test has been ruled out.” His prose is neither better nor worse than that of most lawyers. It is certainly no worse than that of law school catalogues that, for example—and other examples are legion—describe a course in commercial transactions as “problems stemming from the distribution of goods being generally the rights and duties of buyers and sellers . . . .” or that announce a course in property as “a survey of the sweep of history of the land law . . . .” Given the prevalence of such academic prose, it is little wonder that many a course of true law never does run smooth.

The lawyers who gallantly pay their respects to Jane Austen and let it be known that they know Lady Macbeth are clearly not yet equal to their delusion that they are the pen pals of William Shakespeare. As they call for masters of the English language worthy of a jealous mistress, some might let her know that for the time being, she will not need to brush up on her diction.

Still, we can take comfort that the dull fugues and dark patches of legal prose can hardly match the mighty confusions of the men of science, the polysyllabic prattle of educators and social scientists, including the statistical fortune-telling of the economists, the malapropisms of men of affairs unattended by ghost writers, or the enormities of the military.

6 ASSOCIATION OF AMERICAN LAW SCHOOLS, PROCEEDINGS 106, 109 (1952). Apparently the to wit habit is incurable even among committees that worry about words. Thus, one utters the usual declarative sentence: “The lawyer should be a master of the English language, both oral and written . . . .” Then comes the little round repetend: “. . . . and the prospective lawyer should devote his attention to courses that improve his command of and skill in expression.” ABA SECTION FOR INDIVIDUALS IN THE ARMED FORCES 2 (3d ed. 1945).


8 Id. at 47.


We have yet to utter a statement comparable to the recently publicized Air Force Manual pronouncement that "A foolish remark often heard is that Americans have a right to know what is going on."\(^{11}\)

However clumsy our own language, it still rings with inquiry into public questions, in good American legal tradition. Whatever the deficiencies that render foolish our pretensions, our very real concern with critical analysis and use of language is vital in an age that has known so much cynical misuse of words to confuse masses of people who cannot read between the lines. So we watch with interest, though with amiable reservations, the current efforts to develop objective tests of the reading and writing ability of prospective law students.\(^{12}\)

The experimenters tell us that the essay test is not satisfactory because it requires expensive and time-consuming grading, because a candidate's essay performance is highly variable, and because the essay examination is so artificial as to preclude comparison with actual writing situations. The argument is persuasive, and as an inexpert outsider I do not quarrel with it. Again, however, I would voice a caution against mechanical contrivances to test, in the jargon, the components of effective writing. There is a risk of their screening out those who, self-driven to orchestrate ideas in felicitous phrases, find alien the facile outlines that compel organization by label. The testers themselves state that "the writing process is a highly complex one and involves the interaction of many factors."\(^{13}\) Editor Martha Foley spoke the language of writers in noting the fourth-dimensional quality of Carson McCullers's work and adding that "only a very brave writer will venture as far out into the tempestuous seas of human living."\(^{14}\)

We might gain perspective on prim objective tests by noting how deeply involved lawyers are in the tempestuous seas of human living. Do we really want them to bite their literary first teeth on identifications of (A) The Central Idea, (B) Main Supporting Ideas, (C) Illustrative Facts, and (D) Statements Irrelevant to the Central Idea, in such Sample Sets as the following:\(^{15}\)

\begin{center}
\textbf{Key}
\end{center}

\begin{itemize}
  \item [(1)] The Roman roads connected all parts of the Empire with Rome. \hspace{1cm} B
  \item [(2)] The Roman roads were so well built that some of them remain today. \hspace{1cm} B
\end{itemize}


\(^{13}\) Coffman & Papachristou, \textit{supra} note 12.

\(^{14}\) See back cover of \textit{Carson McCullers, Seven [STORIES]} (Bantam ed. 1954).

\(^{15}\) Coffman & Papachristou, \textit{supra} note 12, at 390.
One of the greatest achievements of the Romans was their extensive and durable system of roads.

Wealthy travelers in Roman times used horse-drawn coaches.

Along Roman roads caravans would bring to Rome luxuries from Alexandria and the East.

In present-day Italy some of the roads used are original Roman roads.

No doubt any literate person, however fretful that he is not called upon to do any writing in proof of his capacity to write, could obediently select as the Central Idea the statement that “One of the greatest achievements of the Romans was their extensive and durable system of roads.” He would perhaps grow restless as he identified as a Main Supporting Idea that repetend diminuendo that “The Roman roads connected all parts of the Empire with Rome.” He might hear a stray idea beginning to buzz like a mosquito that Roman history was beginning early to repeat itself, but in the interest of admission to law school, he would brush it off. The darn mosquito would come buzzing again as he identified as another Main Supporting Idea the statement that “The Roman roads were so well built that some of them remain today.” Another mosquito would join the first to buzz that not only were the Roman roads not built in a day, but they were apparently destined to endure forever. Nevertheless, he would concentrate on further demonstrating his writing ability by identifying as an Illustrative Fact the statement that “In present-day Italy some of the roads used are original Roman roads.” A third mosquito would now join the others to buzz furiously that there seemed to be no way of getting off this freeway. Doggedly the examinee would go on to identify as another Illustrative Fact that “Along Roman roads caravans would bring to Rome luxuries from Alexandria and the East.”

Despite the traffic jam, it looks as if our literate man were now practically in. But one final test awaits him. He must identify as Irrelevant to the Central Idea the statement that “Wealthy travelers in Roman times used horse-drawn coaches.”

By now there is a regular horde of mosquitoes buzzing round his head. Here at last is the possibility over which he can meditatively chew a pencil. If a guy is sitting in a coach, and it is drawn by a horse, and he has the wealth that makes leisurely living possible, where logically would the guy be but sensibly enjoying life along some country lane far, far from Rome? Great Central Idea, he might think, and careen straight off the freeway. And another candidate is lost to law school for failure to meet the requirements, by his own subconscious rebellion against experts on effective components of good writing.
Of course, there has been a great saving in time and money, since any good machine can do the grading. And the testers can rest serene that they have eliminated the essay, which is highly variable as a test and also, you will recall, so artificial as to preclude comparison with actual writing situations. If I venture the advice to make haste slowly with admission tests, and not to rest easy that those screened in are invariably competent, it is only because for many years, I have had to assemble the components of writing by lawyers, judges, and professors who have been screened in.

Reassurance comes from the 1959 Conference on Legal Education at the University of Michigan Law School that “Admission tests have proved reasonably accurate predictors of success in law school.” I was about to accept this cheerful news whole and leave selection to the machines when professional caution bade me read more bulletins from the educators. The first that leaped to my eyes, signaling the tenor of the others, carried the discouraging title: “Help for the Semiliterate Law Student,” and began with the ominous words that “It has been recognized by law school teachers and administrators for some time that students who are exceedingly deficient in skill in employing the English language present themselves and are admitted to law schools.”

Clearly, there is still a gap between the reality and our visions of an army of law recruits of fine minds that are also sharp, of extraordinary literary talent or at least rare skill in spelling and the formation of complete sentences, of unassailable integrity, and preferably of noble bearing. Worse still, we have not only failed to establish uniformly high standards of legal education, but have left to widely varying bar examinations the task of final selection for practice.

Even the most rigorous of these examinations do not invariably shoo in all well-educated candidates or halt the march of the inadequately educated at the very threshold of practice. In administration and content, the California bar examination is regarded as a model. Apart from occasional sadistic or foolish or ill-drafted questions, or proper questions calling for unpredictably eccentric analysis, its content closely tests the subject-matter emphasized in good law schools. The questions are drafted by out-of-state professors and in general terms, apart from such subjects as community property and code pleading, where Cali-

17 Groves, Help for the Semiliterate Law Student, 10 J.LEGAL ED. 369 (1958); see also COLUMBIA UNIVERSITY, REPORT OF THE DEAN OF THE SCHOOL OF LAW 5-6 (1955); Macaulay & Manne, A Low-Cost Legal Writing Program—The Wisconsin Experience, 11 J.LEGAL ED. 387 (1959); Cook, Teaching Legal Writing Effectively in Separate Courses, 2 id. at 87 (1949).
fornia law controls, to avoid prejudice against candidates educated in other states.

Yet, the fact remains that the double process of selection, beginning with admission to the law school and ending with admission to the bar, is subject to manic-depressive swings. Thus, in California, we have high standards of general education, low minimum standards of legal education, and high standards of bar examination. Only in 1957 did the state end the shocking system that enabled anyone past twenty-five, without proof of more than four years of private unsupervised study, to become a member of the bar upon passing the bar examination.¹⁸ Though it will soon require two years of prelegal college or the equivalent, it continues to accept as legal education four years of study in unaccredited law schools, correspondence schools, or law offices or chambers.

The California bar examination procedure has the endorsement of the American Bar Association, the Association of American Law Schools, and the National Conference of Bar Examiners.¹⁹ Aficionados invoke statistics that reveal substantial correlation between high-standard education and success on the examination. In the fall examinations from 1939 to 1958, an average of 47.8 per cent passed into the world of practicing lawyers. Applicants trained in approved California law schools were 78 per cent successful, as against 42.8 per cent from unapproved schools.²⁰

Still, the statistics are more disquieting than appears at first glance. Given the concern of educators over such imperfect though high correlation as that between reading and writing tests for admission to law school, one is moved to wonder at the lack of concern over the imperfect though high correlation between the quality of student grades or education and success on the bar examination. The shocking absolute figures remain that every year some of our best students fail and some of our poorest pass. We cannot turn away forever from the implication that an intellectual hundred-yard dash tests memory and physical endurance as well as analytic power. There are topflight scholars in our law schools who have not dared face such a test themselves, however much they advocate it for their students. There are lawyers who smugly equate the tests they yesteryear weathered with current tests based on mounting materials that inevitably call on rote learning as well as logic. There would be panic among them were they suddenly called upon to demonstrate their competence to pass the tests they now require of others.

¹⁸ CAL. BUS. & PROF. CODE § 6060.
²⁰ Id. at 496.
Meanwhile, the bar examinations continue to distract legal education. Still pertinent is Justice Vanderbilt's inquiry of a decade ago,²¹

whether the law schools have not erred . . . in letting the legal profession, through the boards of bar examiners, shape the curriculum, just as our business civilization has in turn too largely dictated the standards of the profession. . . .

Our discussion of selection techniques for admission to law school and to practice has assumed that we have all the applicants we want. Now how, as we set forth to urge the talented to join the legal profession, do we meet their question: But Why? We might analyze their usual objections to ferret out the real one by a process of elimination comparable to Jimmy Durante's *Inka Dinka Doo.* He called for a trumpet, then repeatedly rejected sounds that purported to be the real thing, until at last he could proclaim one that was. In like manner, we can discard meretricious problems finally to arrive at the real one.

Some of the transitory problems are already being solved. A prevalent misconception that the law was overcrowded, bound to discourage prospects, was shattered in 1957 by Dean Harno with some eye-opening statistics on the serious accelerating shortage of lawyers.²² There were low valleys of enrollment in the depression 'thirties and the war years of the 'forties. There was a peak from 1948 to 1950, and thereafter a steady decline. Even the approximately 17,000 lawyers in California constitute a substantially smaller band than the doctors, who themselves do not keep pace with the population. Lawyers cry help on every front, from the disentanglement of persons from the wreckage on highways to the disentanglement of corporations from such complicated cubisms as section seven of the Clayton Act.

A demonstration of how sorely the law needs quality recruits availed little, however, when never have these few been offered so much by so many. In 1958, President Malone of the American Bar Association reported that only three per cent of high school graduates awarded National Merit Scholarships to college declared themselves for law, as against nine per cent for medicine and fifty per cent for the sciences or engineering.²³ The glamor surrounding the possibilities of delivering fresh frozen planets did not light upon such down-to-earth problems as what constitutes good delivery. As the quality students queued up to hitch the stars to their jalopies, the lines at law schools grew shorter.

Who wanted to think about primeval tumult in case or controversy as satellites or missiles dazzled the world not only with the usual destruction capability but also with what the knowledgeable call confusion capability, "also known as spoofing." 24

Other competition for quality prospects continued. Medical schools, hardly aggressive recruiters, have continued to attract volunteers with their kinship to science, their popular esteem, and the additional bait of reported incomes of practitioners so far surpassing those in other professions as to make the Oath of Hippocrates easy to take. Many good students have of late been heading for the teaching profession, which has chronically had recruiting problems of its own. Unexpectedly the beneficiary of the spotlight that plays on science, it is at last commanding modest gains in salary and working conditions and a grudging social acceptance that may in time connote appreciation of teachers in their own right rather than as poor relations of the scientists, strategically placed to supply them with talent.

Meanwhile graduate schools of business administration are slicking up their curricula to decoy promising undergraduates, more than half of whom now graduate into business. 25 No longer can we dismiss them as no more than aspirants to the graces of liberal education. 26 Such business school programs as at Harvard, that eccentric hub of the Boston universe, bode more troublesome competition in the world of laurel leaves. Beyond the primers on punched cards lie the casebooks on human relations; beyond the texts on procurement or pricing lie the studies of resource conservation or urban development; beyond the statistics lie problems for decision that bear startling resemblance to legal analysis. As areas of common knowledge and method develop, so that executives can match case for case with the lawyers who now steadily infiltrate their ranks, competition may well yield to cooperation between the graduate schools.

In any event, the competition among graduate schools has served to dramatize both the shortage of brainpower recruits and the deficiencies of their early education. The richest nation in the world now stands belatedly ready to give aid and comfort to education, to search out gifted students now lost for lack of motivation or funds, and to open the long, steep trails to professional degrees with encouraging direction and adequate scholarships and loans. Nevertheless, lawyers must join against too single-minded financial support of applied research at the expense of

26 Id. at 288-90.
A recent study notes that although the federal government has yet but limited direct influence on education, it has within the last decade "entered the field of university research in science and engineering to a degree which requires constant re-examination," and that it, moreover, diverts creative talent to its own research projects.

Potential public or private donors, accustomed to guided tours through gymnasiums of homogenized drill teams barking as one or through cyclotrons attended by uniformed guards, come with jaded eyes to unguarded law libraries, where nothing is in motion except the minds of students. Pennywise, they squint at the legal minds at work that promise to produce nothing more dynamic than a Mansfield's concept of concurrently dependent conditions in the market-place of contracts or a Fuller's essay on Speluncean Explorers in the caves of jurisprudence.

The literally poor law schools still face an uphill fight to win enough financial support to insure the recruiting of their share of talent. Even at law schools with budgets large enough to provide some help to students, many of them, particularly those with dependents or domiciled far from schools, still can hardly keep step with the mounting costs of bare living, battered books, and a plague of incidental fees. The old issue persists whether part-time law schools can partially solve the financial problem without loss of professional standards. For the present, the need continues for the clumsy double-harness of schools that insist on the hard luxury of full-time study and those that compromise with the hard necessity of part-time study and part-time work.

Recruiting will become easier as forceful itinerant preachers such as law school deans spread the gospel of finances adequate enough to preclude the loss of any man of distinction who happens to be impecunious. Adequate enough also to support such challenging projects as the rewriting of criminal law in new English, the ordering of disorderly administrative rules and regulations now tossing around in gunnysacks or flying in and out of pigeonholes, a rational indexing of statutory law, a continuing review and revision of statutory law, the development of legal communications with the rest of the world, and in open sunlight the revision of capricious and inequitable tax laws that appear to have been drafted by the light of the moon.

In the competition for recruits as for money, the law schools suffer not only from their current lackluster, but also from long-standing irreverence for the legal profession. Polls of the man in the street who prides himself as astute on simple words like justice reveal his belief that lawyers are more astute for fees than justice, and more absorbed with

technicalities than with human concerns. True, he has customarily viewed all learning with a mixture of mistrust and deference, but he now stirs with the Zeitgeist to accord unadulterated deference to the sciences that glow in the dark and to focus unadulterated mistrust on the law, which does not hold a candle to their impressive radiations. He does not share Shaw’s misgivings about science as the new dogma as he watches the fireworks that bind him to the deadly rituals uniting it with the state. His usual villain of learning now is the one he calls shyster or lawyer with equal opprobrium.

Why should I join such a maligned profession?, asks the sought-after prospect. Why should I endure the harsh judgment of laymen who indulge their own easy views of justice? Why should I minister reason unto them who are intractable as well as irascible? For beneath many a mask of a law-abiding citizen lurks the outlaw who never could abide the law even when he paid it his due deference. He now takes his stand against any international law more new-fangled than that of his nervous forefathers, on the mark to turn in their graves or arise therefrom at the slightest disturbance of the old order that brought them so much intermittent peace in their time.

We can answer our skeptical prospect that bar associations are now at work to educate the public away from the notion that the law is so simple that no one needs a lawyer or so complicated that no one dare trust a lawyer and to enlist cooperation against world disorder.

Perhaps in time we will also have intelligent newspaper coverage on newsworthy legal problems, trained law editors allotted at least as much space as sports or society editors. Perhaps in time we will have first-rate undergraduate courses to acquaint students with a full-scale picture of the legal system. It is high time that we encourage intelligent interest that goes beyond misty pride in the sources and development of the common law. It is ironic that in the current awakening to the value of education, there has been so little concern to end general ignorance about legal history and institutions, the kinship and contrast between American and other legal systems and the pervasive influence of law in our social and economic organization. There are no subjects more deserving of an honorable place in general education. Once established, they would greatly assist recruiting for law schools.


Now that we have run through transitory problems, it is appropriate to add that recruiters should not themselves repel prospects with bluster about the precipices from which first-year students purportedly leap or get shoved. It is time to be done with tales of law school as an ordeal whose sole survivors are those of iron muscle, silver tongue, and a talent for digging themselves into foxholes beyond the reach of professors of iron will, acid tongue, and a fox-terrier talent for routing misplaced persons. We need not resort to old husbands’ tales of aboriginal personalities to make out our case.

We might better center our recruiting on the stirring challenges to law revision under the tutelage of scholars whose greatness springs from other than malignant idiosyncrasies. In the usual classroom, there is an underlying sense of professional responsibility to the public as a silent client that also must be served in any private counsel. No one has articulated its elements better than Chief Justice Vanderbilt who summarized:30

These five—counselling, advocacy, improving his profession, the courts and the law, leadership in holding public opinion and the unselfish holding of public office—are the essential functions of the great lawyer.

Those we would recruit are quick to detect whether lawyers live up to such responsibilities. Their talk reveals concern with what they observe or hear of actual practice as doldrums that kill the spirit less with swift pace than with tedium for no high purpose or with strategies that undermine the public interest. At last, we can paraphrase Jimmy Durante, for we touch now the real problem of recruiting.

In that regard, we might well take inventory of the current assets and liabilities of the practicing bar. Foremost among the assets are the countless opportunities the law affords in a variety of places for a variety of talents. Most lawyers will encounter that variety in the course of their everyday tasks as family counsellors. But there is equally interesting work awaiting in more specialized fields in private or government service or even in nonlegal positions that make full use of legal training.

On the asset side also are its associations, growing in strength and hard at work on projects ranging from public education and continuing legal education to mobilized action for the defense of people and principles and for specific reforms of the law. Yet, one who comes from a state like California that has long had an appointment system at least for appellate judges as well as an integrated bar working actively to improve judicial personnel, judicial procedure, and standards of practice, must deplore how many backward states still suffer the primitive ways of

yesteryear, judicial systems riddled with politics and ancient procedures, a profession still lacking the influence of integrated bar associations.

Apparently on the asset side also is the improved education of the bar. Our fledgling lawyers, the most meticulously trained in the world, gleam more brightly than of yore, when many an apprentice played the law by ear, and all too often off key. They seem destined to be leaders par excellence of a country with advantages enough to become one of the most lawful on earth. Yet, the ugly fact that we have become one of the most lawless compels us to inquire what has gone wrong with the leadership of the lawyers. Times as critical as ours can ill afford a profession not quite as good as it should be.

The imaginative perceive the challenge of law school. But if we look with them at what lies beyond, we come to the current liabilities of the practicing bar that adversely affect recruiting. Anecdotes are legion of the law review man with a flair for writing, a bent for philosophy, and a mind ringing with public interest who hopefully walked into the best tax office in town. When last seen, he was completing his seventh year in a cell of meditation on tax avoidance projects for an enterprising contractor with deficiencies in addition well offset by lightning speed at subdividing.

Unquestionably it is easier to sink out of sight in the expanding dol-drum of office work than in the small, choppy seas of litigation. It is easier, too, to grow so remote from the public interest when one is not in the public gaze that at last one has no sense of the public at all. True, there are doctors and scientists of equally withered spirit, but they do their rounds in so flattering a public light that they convince themselves as well as others that whatever they prescribe and formulate is *ipse dixit pro bono publico*. In contrast, the lawyer burrowing away with his client seems both suspect and miserable, as if he had cut himself off not only from ideals, but from reality, a sad sack of a public enemy, an object-lesson to those who ponder where law-school catalogues will lead them.

The law school prospect we are seeking, the man with conscience as well as intelligence, is bound to note the disparity between the concentrated worldly prestige of the practicing elite and the dispersed moral strength of the teaching elite. Of the labors of love in textbooks and law reviews, there is all too little merciful infusion in the heavy discourse of the practitioners.

And how heavy their discourse can sometimes be. Is it that they rationalize that whatever is not leaden would be ergo suspiciously light?
Thus, Fortune quotes from Lawyer Cravath's address to Harvard law students:\(^3\!^1\) 

Too much imagination, too much wit, too great cleverness, too facile fluency, if not leavened by a sound sense of proportion, are quite as likely to impede success as to promote it. The best clients are apt to be afraid of those qualities. They want as their counsel a man who is primarily honest, safe, sound, and steady.

If any unfortunate employees have greater qualities, one supposes they are fenced off from clients with a cautionary Beware: Imaginative Men at Work. As for the others, one imagines them growing gray with safety, secure in the knowledge that though they have frequently delved into little treasuries of unfamiliar jokes and familiar quotations, they have never touched a drop of wit in their lives or taken up living with their imaginations.

Between the neophytes whose integrity has yet to be tested and the practitioners who insist that theirs survives without reference to conscience so long as their practice makes perfect legal sense, the law schools find it difficult to communicate ethics at once noble and realistic, through the case method or through preaching. Yet, many law schools do struggle to communicate enough to preclude not only later outright misuse of the law, but also the more insidious rationalization of sharp counsel that sails just close enough to the law to warrant the risk of challenge. The recruits we most want, in turn, want assurance of an ethical climate in practice comparable to that in law school. Explain to us, they ask, how we can serve our clients well and also the public interest.

Randolph Paul, one of the ablest tax practitioners of our generation, agreed in "The Lawyer as a Tax Adviser," with the American Bar Association's Canons of Professional Ethics that it was impossible to devise a code envisaging all possible situations.\(^3\!^2\) He found it, therefore, incumbent upon himself to decide when to counsel "No" to clients, even at the risk of losing them to less scrupulous practitioners. Within the bounds of reasonable interpretation, he alerted his clients to advantageous statutory provisions whose policy he disapproved, though he often resolved doubts in favor of the Government to give the client a reasonable margin of safety. With this acknowledgement of the great liberty with which a lawyer can practice, Paul then commits himself to the responsibility of using skills and experience to improve the laws in the public in-


terest, "actively, affirmatively, and even aggressively." He envisages that responsibility free of the tendency to assume that what is best for clients is best for the United States, warning that "an analysis of many tax betterment proposals from tax lawyers quickly reveals that the lawyers are promoting the special interests of their clients." Economist James Bonbright also reminds us that "the very members of the legal profession who have been most influential in inducing legislators to pander to the demands of their predatory promoter clients are among the most brilliant examples of the output" of our leading law schools. It hardly becomes those who are tolerant of such practices to deplore ambulance-chasing.

However our exhaustive character investigations serve to uncover known histories of crime or fraud, they afford no predictions as to practices such as Paul and Bonbright deplore, no less reprehensible because they may be legal. It thus behooves the profession to declare its professional conscience, through its bar associations and on public occasions, in a manner that will leave no doubt as to its firm disapproval of practices detrimental to the public interest. It would thereby take a long stride forward in recruiting those who can do most honor to the profession. Certainly it can lead in declaring its professional conscience for the public interest as ably as it has often led in upholding freedom of individual conscience.

So what shall we say to those whom we select as ideal prospects for the law that will induce them to select it? An easy career, or handsomely paid? Not often. A high status in the community? None that compares with the prestige of scientists or doctors or executives or the special ranks of the military. A quiet career? An exciting career? No guarantees either way. And yet, we who have grown accustomed to the whimsical repetends of the law, who know its lapses and its tempers, but also its unsung triumphs in leading the minds of men beyond the dark beliefs of yesteryear and the sudden hysterias of the passing day, know that we would again select the law if we were to live our lives over. Proudly we invite recruits to join us in a profession where many still daily enrich their lives as they bring their talent and courage to every problem under the sun.

33 Id. at 433.
34 Id. at 433-34.