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Charles S. Desmond

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## IDEA OF A LAW SCHOOL

HON. CHARLES S. DESMOND †

VILLANOVA UNIVERSITY is old, like the law itself, in its historical and traditional congruity. But Villanova's law school, like the law itself, in its flexibility of adaptation to modern life, is new. My visit, a few months ago, to the old Villanova campus and the new and ambitious Villanova law school set me to thinking about the teaching of law. Herewith, for what they are worth, are some of my views on that uneasy subject.

This is no harangue on "what is wrong with the law schools," so let us first look at the bright side of the coin. Surely, law teaching has changed much and all for the better, in the last thirty years or so. Gone forever are the two-teacher and few-book schools, with a paper faculty of alumni and practitioners. Gone, or nearly gone, is the lordly indifference to the new subjects (taxation, administrative law, etc.) that sneaked into the statute books and the cases while the lecturers droned away about Coke and Chitty. Standards have been adopted, association memberships carry a guarantee of minimal adherence to those standards, and sanctions are available for non-compliance. The number of trained and professional, as distinguished from part-time or dilettante teachers, has increased enormously. So the schools have moved ahead, although the question remains as to whether they have kept parallel with the reach and stretch of the restless law itself. The law schools, of course, are right when they answer that they cannot be expected to turn out anti-trust or tax specialists or walking manuals of administrative procedure. Most law schools are honestly trying to introduce their students to the fundamentals of those "new" subjects, and what more can they do in the time they have?

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† Associate Judge, New York Court of Appeals. A.B., 1917, Canisius College; LL.B., 1920, University of Buffalo. Formerly, Justice, New York Supreme Court. Member of the Bar of New York; American Bar Association; American Judicature Society; American Law Institute.

My own doubts about modern law teaching (and I have seen quite a few schools in action) are a little vague and formless, but insistent. Generally, they relate themselves to two not uncommon law school attitudes—one toward the bench (or its product) and the other toward the bar. It is hard for a judge to make himself understood when he attempts to express the first of those doubts. For good or ill, much of our law is decisional and the vast complex of appellate court decisions make up most of the law the student must learn and apply. It is a truism that the law is not an exact science. I never heard of a decision that could not be, and was not, challenged by astute, analytical minds. I would not want the law professors to pretend agreement with every utterance of a high court, or to teach their students that their duty is to memorize those utterances as they stand. But the opposite attitude exists and is, I think, time-wasting and confusing to the student. Exegesis of opinions, taking them apart to discover their soundness (if any), is a valuable and necessary exercise. But that process too easily deteriorates into a habit and compulsion of opposition, a fatal facility in finding the flaws in every judicial holding. The brightest students are the most active participants in this happy hunt for fallacy, and everyone has a good time. But I fear that when it is all over the student is left in confusion, not quite sure what is the law and less than completely equipped for his coming bout with the bar examiners. I hope I exaggerate the prevalence of this method of teaching case law. I know I will be accused of judicial over-sensitiveness to criticism. However that may be, I still think a less negative attitude toward the current product of the appellate mills might better prepare the student for his future job.

My other principal complaint, as to the relationship (or lack of relationship) between the schools and the bar, is even harder to pin down. I sense a vague rivalry between the professors and the practitioners. At its worst, it expresses the belief of some teachers that the practicing lawyer is a mere toiler, and the equally invalid belief of some practitioners that the typical professor is a star-gazer who never finds his way down from the astronomical observatory to the earthy places where law is practised and applied. Neither of those little groups is typical of the whole body of teachers and lawyers. But there still is something the matter. The twain just never met. I agree that in my law school days there was too much teaching by local lawyers who dropped in for a casual hour to read a prepared text or to reminisce. But now, I think, there is too little place found

for teaching by experienced, up-to-date practitioners. None of the schools exclude them. Almost every law school catalogue lists some lawyer-teachers. But the effort to bring competent practitioners into the classroom, not as occasional visitors but as essential members of carefully chosen faculties, is something I have failed to find. Admittedly, it is not easy to work out such a relationship. The schools, in duty bound to cover over-large areas of material, hesitate to give time to non-professionals whose material is often poorly organized and over-dramatized. The full-time teacher must carry the ball after the visiting star has made his brief appearance in the line-up. After the widely-known trial lawyer has delighted the students with his courtroom exploits, the professional teacher must bring the reluctant students back to the unglamorous grind of "covering the material."

But the practitioner does bring in something needful. It may be hard to find one who combines proven knowledge and skill as a lawyer with some conception of orderly instruction. But when you do find one, you introduce to your students an element too often sadly missing from the classroom picture. You open the windows and in comes the fresh breath of the great world. The law comes alive in the person of the working lawyer who makes it work, who sees its imperfections and its worth and glories in its usefulness and ability to deal with time and the world. I know that law school deans are harassed and often over-worked men, hard put to it to find competent professional teachers, without beating the bushes for successful lawyers willing and able to teach. But thirty-five years as a lawyer and judge, plus much friendly interest in law schools and valued friendships with very many law school men, has convinced me that a reasonable amount of non-professional teaching is a heathful and helpful ingredient.

Before we turn back to the brighter side, allow me a word about another law school attitude which exists, although perhaps less prevalent than the other two I have referred to. More than one law teacher has, in some form of words, told his students, "This school does not exist to prepare you for a bar examination." The attitude is understandable but we must remember that bar examinations are among the hard facts of life. Many a teacher, like many a judge, considers them to be something less than a perfect method for measuring a person's fitness to be a lawyer. Law faculties are, understandably, puzzled and resentful when their good students flunk in the bar examinations. A university which, after three or more years of close association with its students, solemnly certifies their proficiency in

the law, takes exception when its verdict is overruled by examiners whose acquaintance with the student comes from a scrutiny of his answers to a few written questions. But no one expects the bar examination system to disappear in the foreseeable future. So why not adjust to it? Why not descend to the plains and do a service to the students by slanting the instruction in the general direction, at least, of the bar examinations? They need not be a goal or even a guide. But they should not be ignored.

Now back to the lovely "Main Line" suburb of Villanova, Pa., and the newest of America's one hundred and sixty law schools. A visit there renews one's optimism. The attitudes I deplore are absent or inconspicuous. The dean has mature experience, garnered in several great universities, and a practical, hard-headed administrative competence. The faculty are young, wholesome enthusiasts. One of America's most skilled and learned law librarians heads that important department. Student selection is cautious but sane. A new building is underway. The whole spirit of the enterprise is young and vital and enthusiastic. It would take me very far out on a dangerous limb to predict for Villanova Law School a quick and striking success, but I will be surprised and disappointed if it does not turn out that way. *Vivat, floreat, crescat.*