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WHAT IS A LAW SCHOOL?

Address by Grant Gilmore at the University of Connecticut School of Law 1982 Commencement Exercises

Professor Grant Gilmore was one of the outstanding legal scholars of the nation. He was born in Boston in 1910, educated at Yale, receiving his Bachelor's Degree in 1931, and his Doctor of Philosophy Degree in French literature in 1936. After serving as an instructor in French at Yale, he received his law degree in 1942 and entered New York City practice. He soon turned to legal education and became a Professor of Law at Yale where he taught from 1946 to 1965. He then became a Professor of Law at the University of Chicago for eight years and returned to Yale as Sterling Professor in 1973 until his retirement in 1978. He served as a Professor of Law at Vermont Law School until his death. His book SECURITY INTERESTS IN PERSONAL PROPERTY received the Ames Prize in 1966 as the most distinguished work in legal scholarship for the previous five years. His books THE DEATH OF CONTRACT and THE AGES OF AMERICAN LAW are classics.

What is a Law School?

A place where ignorant armies clash by night; where the embattled forces of faculty and students have at each other in a never-ending fray? A place where normal young men and normal young woman are, in a few months, dehumanized? A place where the simple is made complex, the straight crooked, the clear opaque? A place where never is heard an encouraging word and the thoughts remain cloudy all day?

We have surely not had a good press recently. The Chief Justice of

the United States views us with alarm. We have been caricatured on television. We even seem to have been held responsible for Watergate in that we had failed to inculcate a sense of ethics in the lawyers who flocked to Washington in those years. I am not sure that a three-year curriculum devoted to nothing but ethics would have done much for people who wanted to hold office under the Nixon administration. A student does have to have some natural aptitude for the subject.

I doubt that we could ever succeed in explaining to the public what it is that we do, or think we do. I doubt that we would be wise to try explaining ourselves: the truth might be too much for people to bear. But, among ourselves, on occasions like this, we can meditate about some of our mysteries.

The truth is that we are not, and never have been, in the business of teaching students how to become lawyers. We could of course teach them how to pass the bar exams—but passing the bar exams has nothing to do with becoming a lawyer (I do not mean to suggest that you would be wise to open a practice without having the proper credentials). Becoming a lawyer is something you have to learn for yourself, by yourself, of yourself. The most the Law School can do is to provide a pleasant environment with a library and without too many distractions in which, if you really want to become a member of our strange profession, you can for a few years go about it.

What we do teach is principally reading and writing. The English language is not an instrument that is well designed for accurate communication. It abounds in words that have multiple and inconsistent meanings, in words that have changed their meaning through time, in words that are fuzzy at the edges. If we were mathematicians, we could work with symbols that could be made to mean whatever we chose to make them mean. But we must make do with words that come to us loaded with a freight of history that can never be entirely sloughed off. We are specialists in using our difficult and enchanting language in a way it was never meant to be used: as an instrument for making precise statements. It is true that we can never be wholly successful—which is a piece of good fortune. If it were possible for judges and legislators to achieve absolute clarity in their opinions and statutes, the process of adjusting our rules to reflect changing circumstance would be even more difficult than it now is. But we will never lack for residual ambiguities. Even so, the hallmark of a great lawyer or judge or draftsman is that, when it is appropriate to do so, he can come as close to clarity as the limits of the language permit.

No one can become a good lawyer—let alone a great one—who is not willing to subject himself to the unpleasant discipline of achieving a high degree of technical competence. There is a great deal of unrelieved drudgery in our profession. We must master vast amounts of trivial detail. We must pay great attention to nuts and bolts and other uninteresting things. We must accept the fact that much of our time will be spent in essentially boring pursuits.

There are many original and creative minds who, at least initially, find the technical drudgery repulsive and refuse to submit to it. If they continue in their refusal, they will never become lawyers. If it is your dream to slay the corporate dragon in his lair or to protect the environment against its natural predators, you will get nowhere unless you have accepted the harsh necessity of making yourself into at least as good a lawyer, on the nuts and bolts level, as the lawyer for the dragons and predators, who will be very good indeed.

We are told that the study of law sharpens the mind by narrowing it—and there is indeed more point to the remark than most of us care to admit. But the great masters of our profession are those who are able to become accomplished technicians without losing sight of the goals and values that are what the law, on its highest level, is all about—the judge who can see in the most trivial of cases the broadest of issues, the scholar whose meticulous research leads to fresh insights and novel patterns, the practitioner who organizes complexity in his client's interest but also with a due regard to what the public interest may require. The late Karl Llewellyn observed that technique without values is wickedness; values without technique is foolishness.

What makes law, its study and practice, qualitatively unlike most other things that human beings do is that we can never be sure of anything. As an English poet observed:

That two and two are always four
And never five or three
The heart of man has long been sore
And long 'tis like to be.

But we must indeed learn to live in a world in which what adds up to four today may add up to five tomorrow and three the day after that. That is a situation that most people find unpleasant, frightening, intolerable.

There are periods during which two and two seem to go on adding up to four over a great many years. In our history, the period from the Civil War to World War I seems to have been such a happy time. If

you had gone to law school a hundred years ago, your instructors would have told you what the law was, you would have believed what they told you and, when you got out into the real world, what you had learned would have served you reasonably well. It is true that, if you start poking around beneath the surface, more was going on, even during that period, than appeared—but there was at least a surface appearance of stability. And in a society like ours the surface appearance is all you will ever get—and is indeed all important.

We stand at the end of a half century during which the body of the law has been at fives and threes—not to say, sixes and sevens. The imposing structure of our nineteenth century law—and a magnificent creation it was—lies in ruins. It has not been rebuilt—nor will it be, although there are a good many would-be master builders eager to offer their services. If any of your instructors was rash enough to tell you what the law is, you would not believe him; if you did, you would be poorly equipped to operate in the real world.

A life in the law, beginning a hundred years ago, would have been much less taxing on your nerves than anything you will face. But not necessarily less rewarding or less exciting. The great periods of the law may be those that reflect times not of order and peace but of trouble and disorder.

The great period of Roman jurisprudence came in the third century of our era. Through most of the century the Empire lay prostrate in anarchy and chaos. The unhappy men who were reluctantly forced to assume the imperial purple had little to do but wait for the inevitable assassin's footsteps. At mid-century the barbarians sacked the heavenly city of Rome—an event that led Saint Augustine to many interesting reflections and speculations. But it was during those terrible years when the fabric of a once peaceful and prosperous society was being ripped to shreds that there emerged the great masters who constructed a comprehensive theory of law that, so far as we know, had no precedent; that, as we do know, has rarely since been equalled. They did not save their society from the terror that engulfed it; they did give it a dignity, a coherence, a meaning, a luminousness that shone down through the centuries until, at long last, the good times came again.

We find ourselves in an unprecedented situation—unprecedented, it may well be, in the history of any legal system. We have witnessed the dismantling of our beautifully organized theories of liability—a process made necessary by the technological, economic, and social changes that have been our fate throughout most of our century. In the

attempt to shore up our disintegrating system we have resorted increasingly to statutory solutions and, as time has gone on, the preferred style of statutory drafting has become increasingly detailed, precise, and rigid. In little more than half a century the bulk of our law, which had been judge-made and subject to judicial modification, has been recast in statutory form, subject to modification, under our traditional approach, only by further action of the legislature. Furthermore, many of our statutes and codes, dating from the 1930's and 1940's, are already obsolescent or obsolete and it has become abundantly clear that the legislatures, state and federal, are no longer capable of keeping the statute books up to date.

Thus we must not only seek our new theories of liability; we must find a way of doing so despite the fact that the older theories, which no longer make sense, have been frozen into place by legislative fiat. The tradition of legislative supremacy and judicial subservience that we inherited from a time when the statutory product was, by present standards, meager, is already causing great difficulties, which will increase.

The judges have of course always had, and have exercised, the power to achieve necessary reforms by the process of disingenuous, even deliberate, misconstruction of statutory texts. That is a bad way of dealing with the problem: it leads to a state of law that is fragmented, obscure, inconsistent, and incomprehensible. A major problem of law reform over the next half century will be the reformulation of our theories about the allocation of power between court and legislature.

What lies before us is, perhaps mercifully, unknown. But it is obvious that there is, from the legal point of view, a great deal to be done. It can be done well or badly. If the Law School has properly performed its function—has provided you with a base from which, through your own lonely work, you can go on to become a lawyer—the chances are much better that the job will be well done.