

THE LAW SCHOOL: SERVICE TO THE STATE AND NATION

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In 1868, a candidate for a law school teaching job was typically a local practitioner who wished to teach part-time; his teaching was based on his own knowledge and practice. The few full-time faculty members taught so many courses that their time was fully occupied with classroom work, student interviews, and keeping abreast of new developments in the law. The idea that a teacher should spend substantial amounts of time in research or service activities had not yet developed.

The teacher-practitioner has not entirely disappeared today. However, at many schools, including the University of Wisconsin Law School, it has been concluded that the law teacher can better keep in touch, and at the same time be of the most help to society, through activity in the fields of research or service. Research and service are not mutually exclusive, since service activities not based on some kind of research are of dubious utility, as is research completely unconnected with human affairs. My concern in this short survey will be with activities which emphasize service. At the risk of disagreement, I will now define these as legal education outside law school (extension activities) and activities designed to assist officers and agencies of government (particularly research, drafting, and committee work designed to produce legislative solutions to current problems). This should be differentiated from research activities which describe current problems, criticize present handling of problems, present legal theory, suggest change, or propose theses about human behavior in fields of concern to the law.

A few words about the orientation of the individual engaging in service might be helpful. First of all, he must be responsible, whether instructing outside the law school, teaching a class in school, preparing a text, or assisting a legislative committee. He must study the problem and the present law in the context of an ongoing human situation and attempt to prescribe a viable solution for the immediate future. If he is concerned with legislation, he must at least attempt to set up the project to facilitate adoption of the proposal.¹ He must know, or learn, Wisconsin or federal law. If the goal of the project is the preparation of legislation, he must understand the techniques of draftsmanship.

Service activities at Wisconsin must be understood against the background of the "Wisconsin Idea." Curti and Carstensen in

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¹ For a further discussion of this phase, see Conway, *Making Research Effective in Legislation*, 1967 WIS. L. REV. 252.

their *The University of Wisconsin—A History 1848-1925* describe the development of the idea.² Beginning with President Bascom's philosophical concept, expressed in 1887, that the university has an obligation to promote the well-being of the people of Wisconsin, the idea became concrete through the development of institutes and other extension activities. With the advent of Progressive Republican state administrations shortly after the turn of the century, the idea of the need for expert assistance in the preparation of legislation was institutionalized to better attack social problems. A drafting service was established to assist the legislature in the preparation of legislation and many university faculty members served on advisory boards and commissions. Before World War I the Law School was not in a position to assist greatly in carrying forward the Wisconsin Idea; many of the faculty were part-time practitioners and the few full-time faculty members came and went fairly rapidly.³ Faculty activity as Wisconsin members of the Conference of Commissioners on Uniform State Laws and participation in the Wisconsin branch of the American Institute of Criminal Law and Criminology should be mentioned.⁴

After World War I the faculty's major service contribution related not to legislation, but to law in the courts, as several accepted membership on various American Law Institute Restatement of the Law committees.

With the coming of the Great Depression and the availability of federal funds to assist students, faculty interest in criminal law resulted in a complete revision of the substantive criminal law in the late 1930's. During the period 1918-1940, several faculty members on leave were active in the federal government, especially in the field of labor law.

War intervened to put an end to service activities; faculty members were either working directly on war jobs or overburdened with teaching.

The greatest contribution, considered either in terms of faculty participation or volume of product, came after the war. At this time a new concept—law in action—entered the picture. It was felt that both research and service were based too much on description of the situation as it appeared in law books and that solutions were too deductive. The remedy suggested was more field research to find out how the law was being administered rather than to rely on a statutory statement of how it should be administered. In addition, every important project from this time on was assisted by an advisory committee of knowledgeable people who knew not only the law, but how it was administered. The

² See M. CURTI & V. CARSTENSEN, *THE UNIVERSITY OF WISCONSIN—A HISTORY 1848-1925* (2 vols. 1949).

³ 2 M. CURTI & V. CARSTENSEN, *supra* note 2, at 431.

⁴ *Id.* at 441-42.

law in action idea was promoted by one faculty member with great success in the field of conservation, especially conservation of water resources; legislation he inspired bears the imprint of sound understanding of the actual field problems.

Shortly after World War II another revision of the substantive criminal law was begun; this project, enacted into law in 1955, occupied two full-time research assistants, and two professors part-time for seven years. Individual professors worked on a number of revision projects: a revision of the corporation code, passed in 1951;⁵ a revision of the law on personal jurisdiction and service of process, passed in 1959;⁶ a revision of law relating to children, passed in 1955;⁷ and a revision of family law, passed in 1959.⁸ One professor was prominent in the work of the American Law Institute and the Commissioners on Uniform State Laws in preparing the Uniform Commercial Code; two professors worked on the Wisconsin version which was adopted in 1963.⁹

On the national scene, in addition to the work already mentioned, professors worked on patent policy and legislation, and school legislation in the wake of *Brown v. Board of Education*.¹⁰

The state bar's project to revise probate and real property law is a continuing project which has absorbed the time and attention of several faculty members. Three professors and several research assistants have worked on various parts of this project since 1963. A revision of insurance law, still in progress at the time of this writing, has occupied much of the attention of one faculty member. Two members served on each of two Wisconsin Constitutional Revision Commissions during 1959-1960 and 1964-1965.

Many individuals have assisted committees of the Legislative Council on individual projects too numerous to mention.

Faculty members have served, and continue to serve on many official bodies concerned with continuous law and rule revision. One professor is a member of the United States Supreme Court's Advisory Committee on Criminal Rules; another, as representative of the Dean, sits on the state Judicial Council.

Members of the Law School faculty make substantial contributions to the present program of University Extension. Their services include: (1) sole authorship of a procedure handbook which is now used by Wisconsin judges and practitioners; (2) editorship of a practice book on the Wisconsin Uniform Commercial Code; (3) development and maintenance of jury instruction books; (4) consultation on Wisconsin Evidence books; and (5) participation as

⁵ Ch. 731, § 7, [1951] Wis. Laws 591; WIS. STAT. ch. 180 (1965).

⁶ Ch. 226, §§ 14-15, [1959] Wis. Laws 238; WIS. STAT. ch. 262 (1965).

⁷ Ch. 575, [1955] Wis. Laws 719; WIS. STAT. ch. 48 (1965).

⁸ Ch. 595, [1959] Wis. Laws 740; WIS. STAT. chs. 245-48 (1965).

⁹ Ch. 158, [1963] Wis. Laws 155; WIS. STAT. chs. 401-09 (1965).

¹⁰ 347 U.S. 483 (1954).

instructors in continuing legal education classes. Individuals on the faculty also participate in educational programs presented by sections of the state bar.

As the foregoing shows, the faculty member of today must be prepared to conduct his research and service activities in any field of the law. Furthermore, the most effective way to pursue these activities is through research oriented by the concept of law in action.